

established time periods. This disclosure must include a statement of the action taken or planned to resolve the situation; and

(4) Objectives and timetable established for the next reporting period.

(q) *Audit requirements.* Audit reports will be prepared and submitted in accordance with §1942.17(q)(4) of subpart A of part 1942 of this chapter. The audit requirements only apply to the year(s) in which grant funds are received. Audits must be prepared in accordance with generally accepted government auditing standards using publication, “Standards for Audits of Governmental Organizations, Programs, Activities and Functions.”

(r) *Grant cancellation.* Grants which have been approved and funds obligated may be cancelled by the grant approval official in accordance with §1942.12 of subpart A of part 1942 of this chapter. The State Director will notify the State coordinator that the grant has been cancelled.

(s) *Grant servicing.* Grants will be serviced in accordance with subparts E and O of part 1951 of this chapter.

(t) *Subsequent grants.* Subsequent grants will be processed in accordance with the requirements of this subpart for each additional time period a State is designated to participate in this program.

#### **§ 1940.969 Forms, exhibits, and subparts.**

Forms, exhibits, and subparts of this chapter (all available in any FmHA or its successor agency under Public Law 103-354 office) referenced in this subpart, are for use in establishing a State economic development review panel and for administering the Panel Grant program associated with the panel.

#### **§ 1940.970 [Reserved]**

#### **§ 1940.971 Delegation of authority.**

The authority authorized to the State Director in this subpart may be redelegated.

#### **§§ 1940.972–1940.999 [Reserved]**

#### **§ 1940.1000 OMB control number.**

The collection of information requirements contained in this regula-

tion has been approved by the Office of Management and Budget and assigned OMB control number 0575-0145. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 48 hours per response with an average of 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

### **PART 1941 [RESERVED]**

## **PART 1942—ASSOCIATIONS**

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GUIDE 1 TO SUBPART G OF PART 1942—PROJECT MANAGEMENT AGREEMENT BETWEEN THE \_\_\_\_\_ REGIONAL COMMISSION AND THE FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354, DEPARTMENT OF AGRICULTURE

GUIDE 2 TO SUBPART G OF PART 1942—RESOLUTION

### Subpart H [Reserved]

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989.

### Subpart A—Community Facility Loans

SOURCE: 50 FR 7296, Feb. 22, 1985, unless otherwise noted.

#### § 1942.1 General.

(a) This subpart outlines the policies and procedures for making and processing insured loans for Community Facilities except fire and rescue and other small essential community facility loans and water and waste disposal facilities. This subpart applies to Community Facilities loans for fire and rescue and other small essential community facility loans only as specifically provided for in subpart C of this part. Water and waste loans are provided for in part 1780 of this title. The Agency shall cooperate fully with State and local agencies in making loans to assure maximum support to the State strategy for rural development. State Directors and their staffs shall maintain coordination and liaison with State agency and substate planning districts. Funds allocated for use under this subpart are also for the use of Indian tribes within the State, regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity to participate in the

benefits of these programs as compared with other residents of the State. Federal statutes provide for extending Agency financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap. The participants must possess the capacity to enter into legal contracts under State and local statutes. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Agency employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an Agency employee.

(b) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes are eligible to apply for and are encouraged to participate in this program. Such tribes might not be subject to State and local laws or jurisdiction. However, any requirements of this subpart that affect applicant eligibility, the adequacy of FmHA or its successor agency under Public Law 103-354's security or the adequacy of service to users of the facility and all other requirements of this subpart must be met.

(c) Loans sold without insurance by FmHA or its successor agency under Public Law 103-354 to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

(d) The District Office will normally be the entry point for preapplications and serve as a local point. Applications will be filed with the District Office and loans will be processed to the maximum extent possible by the District Office staff. The applicant's governing body should designate one person to coordinate the activities of its engineer, architect, attorney, and any other professional employees and to act as contact person during loan processing. FmHA or its successor agency under Public Law 103-354 personnel should make every effort to involve the appli-

cant's contact person when meeting with the applicant's professional consultants and/or agents. The State Office staff will monitor community programs loanmaking and servicing, and will provide assistance to District Office personnel to the extent necessary to assure that the activities are being accomplished in an orderly manner consistent with FmHA or its successor agency under Public Law 103-354 regulations.

[50 FR 7296, Feb. 22, 1985, as amended at 52 FR 38908, Oct. 20, 1987; 52 FR 43725, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987; 57 FR 21193, May 19, 1992; 58 FR 226, Jan. 5, 1993; 62 FR 33510, June 19, 1997; 68 FR 65830, Nov. 24, 2003]

#### § 1942.2 Processing applications.

(a) *Preapplications.* (1) The District Office may handle initial inquiries and provide basic information about the program. They are to provide the preapplication, SF 424.2, "Application for Federal Assistance (For Construction)." The District Director will assist applicants as needed in completing SF 424.2, and in filing written notice of intent and priority recommendation with the appropriate clearinghouse. The District Director will inform the applicant that it may be necessary to apply for credit from commercial sources. It will be explained that if credit for the project is available from commercial sources at reasonable rates and terms the applicant is not eligible for FmHA or its successor agency under Public Law 103-354 financing. The District Director will meet with the applicant, whenever appropriate to discuss FmHA or its successor agency under Public Law 103-354 preapplication processing. Guidance and assistance will be provided by the State Director, as needed, for orderly application processing. The District Director will determine that the preapplication is properly completed and fully reviewed. The District Director will then forward to the State Director:

- (i) Eligibility determination and recommendations.
- (ii) One copy of SF 424.2.
- (iii) State intergovernmental review comments and recommendations (clearinghouse comments).
- (iv) Priority recommendations.

(v) Supporting documentation necessary to make an eligibility determination such as financial statements, audits, or copies of organizational documents or existing debt instruments. The District Director will advise applicants on what documents are necessary. Applicants should not be required to expend significant amounts of money or time developing supporting documentation at the preapplication stage.

(2) The State Director will review each SF 424.2 along with other information that is deemed necessary to determine whether financing from commercial sources at reasonable rates and terms is available. If credit elsewhere is indicated, the State Director will instruct the District Director to so inform the applicant and recommend the applicant apply to commercial sources for financing. Projects may be funded jointly with other lenders provided the requirements of §1942.17 (g) of this subpart are met. Joint financing occurs when two or more lenders make separate loans to supply the funds required by one applicant for a project.

(i) In order to provide a basis for referral of preapplications of only those applicants who may be able to finance projects through commercial sources, State Directors should maintain liaison with representatives of banks, investment bankers, financial advisors, and other lender representatives in the State. State Directors with their assistance, should maintain criteria for determining preapplications which should be referred to commercial lenders. A list of lender representatives interested in receiving such referrals should be maintained.

(ii) The State Director shall maintain a working relationship with the State Office or official that has been designated as the single point of contact for the intergovernmental review process and give full consideration to their comments when selecting preapplications to be processed.

(iii) The State Director will review the District Director's eligibility determination and recommendations in sufficient time for the District Director's use in preparing and issuing Form AD-622.

(iv) Form AD-622 will be prepared by the District Director within forty-five (45) calendar days from receipt of the preapplication by FmHA or its successor agency under Public Law 103-354, stating the results of the review action. The original will be signed and delivered to the applicant with a copy to the State Director.

(3) For preapplications eligible for FmHA or its successor agency under Public Law 103-354 funding which have the necessary priority to compete with similar preapplications, FmHA or its successor agency under Public Law 103-354 will issue Form AD-622 inviting an application containing the following statement:

You are advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered, or which would have an adverse effect on the environment. Satisfactory completion of the environmental review process must occur prior to the issuance of the letter of conditions.

(4) The following statement must be added to Form AD-622 when notifying preapplicants who are eligible, but do not have the priority necessary for further consideration at this time:

You are advised against incurring obligations which would limit the range of alternatives to be considered, or which cannot be fulfilled without FmHA or its successor agency under Public Law 103-354 funds until the funds are actually made available. Therefore, you should refrain from such actions as initiating engineering and legal work, taking actions which would have an adverse effect on the environment, taking options on land rights, developing detailed plans and specifications, or inviting construction bids until notified by Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 to proceed.

(b) *Environmental review.* Environmental requirements will be documented in accordance with subpart G of part 1940 of this chapter and submitted to the State Director. Starting with the earliest discussions with prospective applicants or review of preapplications and continuing throughout application processing, environmental issues must be considered. This should provide flexibility to consider alternatives to the project and develop methods to mitigate identified

adverse environmental impacts. Documentation of the appropriate environmental review should be completed as soon as possible; however, the State Director will ensure that the appropriate environmental review is completed prior to issuing the letter of conditions.

(c) *Applications.* The District Director should assist the applicant in application assembly and processing.

(1) State Directors should have applications in process representing approximately 150 percent of the current State allocation.

(2) The application docket will include SF 424.2, and related forms, materials, and information. The application will be assembled in accordance with guide 15 of this subpart or State guides developed under §1942.16 of this subpart.

(3) When an applicant is notified to proceed with an application, the District Director should arrange for a conference with the applicant to provide copies of appropriate appendices and forms; furnish guidance necessary for orderly application processing; and to initiate a processing checklist for establishing a time schedule for completing items using Form FmHA or its successor agency under Public Law 103-354 1942-39, "Processing Check List (Other Than Public Bodies)," or Form FmHA or its successor agency under Public Law 103-354 1942-40, "Processing Check List (Public Bodies)," or other checklist adopted for use in the State. The District Director will confirm decisions made at this conference by letter to the applicant and by a copy of the processing checklist. The original and a copy of the processing checklist will be retained in the District Office and a copy will be forwarded to the State Office. The original and copy of the checklist retained in the District Office will be kept current as application processing actions are taken. The copy will be sent to the State Office to use in updating its copy of this form. The State Office will then return the District Office's copy. As the application is being processed, and the need develops for additional conferences, the District Director will arrange with the applicant for such conference to extend and update the processing checklist.

(d) *Review of decision.* If at any time prior to loan approval it is decided that favorable action will not be taken on a preapplication or application, the District Director will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA or its successor agency under Public Law 103-354 may be requested by the applicant under subpart B of part 1900 of this chapter. The following statement will also be made on all notifications of adverse action.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

(e) *Joint funding.* FmHA or its successor agency under Public Law 103-354 may finance projects jointly with funds from other sources, such as, commercial/private lenders, Federal agencies, State and local Governments, etc. Other departments, agencies, and executive establishments of the Federal Government may participate and provide financial and technical assistance jointly with FmHA or its successor agency under Public Law 103-354 to any applicant to whom FmHA or its successor agency under Public Law 103-354 is providing assistance. The amount of participation by the other department, agency, or executive establishment shall only be limited by its authorities except that any limitation on joint participation itself is superseded by section 125 of Pub. L. 95-334 (Section 347, Consolidated Farm and Rural Development Act, as amended).

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6786, Mar. 3, 1988; 54 FR 47197, Nov. 13, 1989; 55 FR 13503 and 15304, Apr. 11, 1990; 57 FR 21194, May 19, 1992; 61 FR 6309, Feb. 20, 1996]

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### § 1942.3 Preparation of appraisal reports.

When the loan approval official requires an appraisal, Form FmHA or its successor agency under Public Law 103–354 422–10, “Appraisal Report—Water and Waste Disposal Systems,” may be used with appropriate supplements. Form FmHA or its successor agency under Public Law 103–354 442–10 may be modified as appropriate or other appropriate format may be used for facilities other than water and waste disposal. Appraisal reports prepared for use in connection with the purchase of existing essential community facilities or when required by §1942.17 (g)(2)(iii)(B)(2), (g)(3)(iii)(B)(2), and (j)(4) of this subpart, may be prepared by the FmHA or its successor agency under Public Law 103–354 engineer/architect or, if desired by the State Director, some other qualified appraiser. The loan approval official may require an applicant to provide an appraisal prepared by an independent qualified appraiser; however, the loan approval official must determine that the appraised value shown in such reports reflects the present market value.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6786, Mar. 3, 1988]

### § 1942.4 Borrower contracts.

The State Director will, with assistance as necessary by the Office of the General Counsel (OGC), concur in agreements between borrowers and third parties such as contracts for professional and technical services and contracts for the purchase of water or treatment of waste. State Directors are expected to work closely with representatives of engineering and architectural societies, bar associations, commercial lenders, accountant associations, and others in developing standard forms of agreements, where needed, and other such matters in order to expedite application processing, minimize referrals to OGC, and resolve problems which may arise.

### § 1942.5 Application review and approval.

(a) *Procedures for review.* Ordinarily FmHA or its successor agency under Public Law 103–354 staff review will

proceed as applications are being developed. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the staff and approval officials. The engineering/architect reports and associated data are to be reviewed by the FmHA or its successor agency under Public Law 103–354 staff engineer or architect, as appropriate, as soon as available but prior to the District Director's completion of the project summary. During the review the District Director in all cases will make certain that no low income or minority community within the service area has been omitted or discouraged from participating in the proposed project. The District Director will also determine how the service area was defined to assure that gerrymandering of specific communities or areas has not occurred. The findings should be documented in the running record. Prior to presenting the assembled application to the approval official, the assembled application ordinarily will be processed in the following sequence:

(1) The Rural Development manager will complete the project summary, including written analysis and recommendations, and will prepare a draft letter of conditions listing all the requirements that the applicant must agree to meet within a specific time.

(i) Requirements listed in letters of conditions will include the following unless inappropriate due to the particular type of funding or entity involved: Maximum amount of loan and/or grant which may be considered, scheduling of payments, term of loan and any deferment of principal which may be allowed, reserve requirements, compliance with section 504 of the Rehabilitation Act of 1973, number of users (members) and verification required, contributions rates and charges, interim financing, disbursement of funds, security requirements, graduation requirements, debt collection policies execution of Form FmHA or its successor agency under Public Law 103–354 1910–11, “Application Certification, Federal Collection Policies for Consumer or Commercial Debts,”

organization, business operations, insurance and bonding (including applicant/borrower and contractor), construction contract documents and bidding, accounts, records, and audit reports required (including requirements of OMB Circulars A-128 and A-110), adoption of Form FmHA or its successor agency under Public Law 103-354 1942-47, "Loan Resolution (Public Resolution)," for public bodies or Form FmHA or its successor agency under Public Law 103-354 1942-9, "Loan Resolution (Security Agreement)," for other than public bodies, closing instructions, and other requirements.

(ii) Each letter of conditions will contain the following paragraphs:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application. Any changes in the project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by FmHA or its successor agency under Public Law 103-354 by written amendment to this letter. Any changes not approved by FmHA or its successor agency under Public Law 103-354 shall be cause for discontinuing processing of the application.

This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed \$\_\_\_\_\_.

If FmHA or its successor agency under Public Law 103-354 makes the loan, you may make a written request that the interest rate be the lower of the rate in effect at the time of loan approval or the time of loan closing. If you do not request the lower of the two interest rates, the interest rate charged will be the rate in effect at the time of loan approval. The loan will be considered approved on the date a signed copy of Form FmHA or its successor agency under Public Law 103-354 1940-1, "Request for Obligation of Funds," is mailed to you. If you want the lower of the two rates, your written request should be submitted to FmHA or its successor agency under Public Law 103-354 as soon as practical. In order to avoid possible delays in loan closing such a request should ordinarily be submitted at least 30 calendar days before loan closing.

Please complete and return the attached Form FmHA or its successor agency under Public Law 103-354 1942-46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application.

(iii) Rural Development Managers may add the following:

If the conditions set forth in this letter are not met within \_\_\_\_\_ days from the date hereof, FmHA or its successor agency under Public Law 103-354 reserves the right to discontinue the processing of the application.

(2) The State staff engineer or architect, as appropriate, will include a written analysis and recommendations on the project summary.

(3) The Chief, Community Programs or Community and Business Programs, will review the assembled application and include in the project summary a written analysis and recommendations, including the availability of other credit and other eligibility determinations. The draft letter of conditions will be reviewed and any necessary modifications made.

(b) *Project requiring National Office review.* Prior National Office review is required for certain proposals (See subpart A of part 1901 of this chapter).

(1) The Rural Development Manager should assemble applications for the National Office review in the following order from top to bottom and forward them to the State Director for review and recommendation prior to submission to the National Office:

(i) Transmittal memorandum including:

- (A) Recommendation.
- (B) Date of expected obligation.
- (C) Any unusual circumstances.

(ii) Copies of the following:

- (A) Proposed letter of conditions.
- (B) Applicable State Intergovernmental review comments. (These requirements are set forth in U. S. Department of Agriculture regulations 7 CFR 3015, subpart V and RD Instruction 1970-I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site.)

(C) Community Facilities Project Summary.

(D) Preliminary architectural or engineering report.

(E) Form FmHA or its successor agency under Public Law 103-354 442-3, "Balance Sheet," or a financial statement or audit that includes a balance sheet.

(F) For other essential community facility loan applicants whose proposals do not meet the assured income or tax based security requirements of §1942.17 (g)(2)(iii) and (g)(3)(iii) of this

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subpart, financial information for the last five years of operation will be submitted if available. The type of financial information to be submitted should be determined based on what is available and the following order of preference:

- (1) Complete audits;
- (2) Unaudited financial statements including balance sheets and statements of income and expenses;
- (3) Lists of income and expenses.

(G) For other essential community facility loans secured under paragraph (b)(1)(ii)(F) of this section, submit a detailed explanation of the proposed security; evidence that the application cannot be processed and the loan secured under paragraph (b)(1)(ii)(F) of this section; evidence supporting the efforts by the applicant in persuading appropriate public bodies to provide the proposed facility and services and the results, and comments of the Regional Attorney concurring in the applicants' legal authority to give the proposed security.

(H) Financial Feasibility Report when required by §1942.17 (h)(1).

(I) Proposed lease agreements, management agreements, or other agreements when facility management will be provided by other than the applicant.

(J) Other forms and documents on which there are specific questions.

(K) Environmental impact analysis and documentation.

(2) For applications to be reviewed in the State or field, at least those items in paragraph (b)(1)(ii) of this section, should be available.

(c) *For all applications.* All letters of conditions will be addressed to the applicant, signed by the Rural Development Manager or other Agency representative designated by the State Director, and delivered to the applicant. Upon signing the letter of conditions, the Rural Development Manager will send two copies of the letter of conditions and two copies of the project summary to the State Director. The State Director will immediately send one copy of the project summary and a copy of the letter of conditions to the National Office, Attention: Community Programs. The Rural Development Manager, with assistance as needed

from the State Office, will discuss the requirements of the letter of conditions with the applicant's representatives and afford them an opportunity to execute Form RD 1942-46.

(1) The letter of conditions should not ordinarily be issued unless the State Director expects to have adequate funds in the State allocation to fund the project within the next 12 months based on historic allocations or other reliable projections.

(2) If the applicant declines to execute Form FmHA or its successor agency under Public Law 103-354 1942-46, the Rural Development Manager will immediately notify the State Director and provide complete information as to the reasons for such declination.

(3) If the applicant accepts the letter of conditions, the Rural Development Manager will forward the executed Form RD 1942-46 and a signed and an unsigned copy of Form RD 1940-1 to the State Director.

(d) *Loan approval and obligating funds.* Loans will be approved under this subpart and subpart A of part 1901 of this chapter (available in any FmHA or its successor agency under Public Law 103-354 office). The loan will be considered approved on the date the signed copy of Form FmHA or its successor agency under Public Law 103-354 1940-1 is mailed to the applicant. The State Director or designee may request an obligation of funds when available within their State allocation and according to the following:

(1) Form FmHA or its successor agency under Public Law 103-354 1940-1, authorizing funds to be reserved, may be executed by the loan approval official providing the applicant has the legal authority to contract for a loan and to enter into required agreements and has signed Form FmHA or its successor agency under Public Law 103-354 1940-1.

(2) If approval was concurred in by the National Office, a copy of the concurring memorandum will be attached to the original of Form FmHA or its successor agency under Public Law 103-354 1940-1.

(3) The State Director or designee will request an obligation of loan and/or grant funds via the FmHA or its successor agency under Public Law 103-354 Field Office terminal system after

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signing Form FmHA or its successor agency under Public Law 103-354 1940-1. The requesting official will furnish security identification as necessary. The requesting official will record the date, time of request, and their initials on the original Form FmHA or its successor agency under Public Law 103-354 1940-1.

(4) The obligation date and date the applicant is notified of loan and/or grant approval is six working days from the date funds are reserved unless an exception is granted by the National Office.

(5) Immediately after verifying that funds have been reserved, utilizing the FmHA or its successor agency under Public Law 103-354 Field Office terminal system status inquiry function, the State Director or designee will notify by telephone, the Legislative Affairs and Public Information Staff in the National Office as required by FmHA Instruction 2015-C, "Announcement of Approval of Loans, Grants, or Guaranteed Loans for Rural Project," (available in any FmHA or its successor agency under Public Law 103-354 State Office).

(6) Loan approval and applicant notification will be accomplished by the State Director or designee by mailing to the applicant on the obligation date a copy of Form FmHA or its successor agency under Public Law 103-354 1940-1 which has been previously signed by the applicant and loan approval official. The date the applicant is notified is also the date the interest rate at loan approval is established. The State Director or designee will record the date of applicant notification and the interest rate in effect at that time on the original of Form FmHA or its successor agency under Public Law 103-354 1940-1 and include it as a permanent part of the District Director project file with a copy placed in the State Office file.

(7) If a transfer of obligation of funds is necessary, complete Form FmHA or its successor agency under Public Law 103-354 450-10, "Advice of Borrower's Change of Address, Name, Case Number, or Loan Number," and process via the FmHA or its successor agency under Public Law 103-354 Field Office terminal system. An obligation of

funds established for an applicant may be transferred to a different (substituted) applicant provided:

(i) The substituted applicant is eligible to receive the assistance approved for the original applicant; and

(ii) The substituted applicant bears a close and genuine relationship to the original applicant (such as two organizations that are controlled by the same individuals); and

(iii) The need for and scope of the project and the purpose(s) for which FmHA or its successor agency under Public Law 103-354 funds will be used remain substantially unchanged.

[50 FR 7296, Feb. 22, 1985, as amended at 50 FR 33332, Aug. 19, 1985; 50 FR 43378, Oct. 25, 1985; 53 FR 6787, Mar. 3, 1988; 54 FR 47196-47197, Nov. 13, 1989; 63 FR 16089, Apr. 2, 1998; 67 FR 60584, Sept. 27, 2002; 67 FR 63019, Oct. 9, 2002; 76 FR 80730, Dec. 27, 2011]

### § 1942.6 Preparation for loan closing.

(a) *Obtaining closing instructions.* Completed dockets will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with a request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(b) *Verification of users and other funds.* (1) In connection with a loan for a utility type project to be secured by a pledge of user fees or revenues, the District Director will authenticate the number of users prior to loan closing or the commencement of construction, whichever occurs first. Such individual will review each signed user agreement and check evidence of cash contributions. If during the review any indication is received that all signed users may not connect to the system, there will be such additional investigation

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made as deemed necessary to determine the number of users who will connect to the system. The District Director will record the determination in a memorandum to the State Director.

(2) In all cases the availability and amounts of other funds to be used in the project will be verified by FmHA or its successor agency under Public Law 103-354.

(c) *Initial compliance review.* An initial compliance review should be completed under subpart E of part 1901 of this chapter.

(d) *Ordering loan checks.* Checks will not be ordered until:

(1) The applicant has complied with approval conditions and closing instructions, except for those actions which are to be completed on the date of loan closing or subsequent thereto; and

(2) The applicant is ready to start construction or funds are needed to pay interim financing obligations.

(e) *Multiple advances of FmHA or its successor agency under Public Law 103-354 funds.* When FmHA or its successor agency under Public Law 103-354 provides loan funds during the construction period using interim (temporary) instruments described in §1942.19(g) of this subpart, the following action will be taken prior to the issuance of the permanent instruments:

(1) The Finance Office will be notified of the anticipated date for retirement of the interim instruments and issuance of permanent instruments of debt.

(2) The Finance Office will prepare a statement of account including accrued interest through the proposed date of retirement and also show the daily interest accrual. The statement of account and the interim financing instruments will be forwarded to the District Director.

(3) The District Director will collect interest through the actual date of the retirement and obtain the permanent instrument(s) of debt in exchange for the interim financing instruments. The permanent instruments and the cash collection will be forwarded to the Finance Office immediately, except that for promissory notes and single instrument bonds fully registered as to principal and interest, the original will be

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retained in the District Office and a copy will be forwarded to the Finance Office. In developing the permanent instruments, the sequence of preference set out in §1942.19(e) of this subpart will be followed.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988; 53 FR 26589, July 14, 1988]

### § 1942.7 Loan closing.

Loans will be closed in accordance with the closing instructions issued by the OGC and §1942.17(o) of this subpart and as soon as possible after receiving the check.

(a) *Authority to execute, file, and record legal instruments.* Area Office employees are authorized to execute and file or record any legal instruments necessary to obtain or preserve security for loans.

(b) *Preparation of mortgages.* Unless otherwise required by State law or unless an exception is approved by the State Director with advice of the OGC, only one mortgage will be taken even though the indebtedness is to be evidenced by more than one instrument.

(c) *Source of funds for insured loans.* All loans will be made from the Rural Development Insurance Fund (RDIF).

(d) *Unused funds.* Obligated funds planned for project development which remain after all authorized costs have been provided for will be disposed of in accordance with §1942.17(p)(6) of this subpart.

(e) *Loan disbursements.* Whenever a loan disbursement is received, lost, or destroyed, the Rural Development Manager will take appropriate actions outlined in Rural Development Instruction 2018-D.

(f) *Supervised bank accounts.* Supervised bank accounts will be handled under subpart A of part 1902 of this chapter.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988; 59 FR 54788, Nov. 2, 1994; 68 FR 61331, Oct. 28, 2003; 70 FR 19253, Apr. 13, 2005]

### § 1942.8 Actions subsequent to loan closing.

(a) *Mortgages.* Real estate or chattel mortgages or security instruments will be delivered to the recording office for recordation or filing, as appropriate. A

copy of such instruments will be delivered to the borrower. The original instrument, if returnable after recording or filing, will be retained in the borrower's case folder.

(b) *Notes and bonds.* When the debt instrument is a promissory note or single instrument bond fully registered as to principal and interest, a conformed copy will be sent to the Finance Office immediately after loan closing and the original instrument will be stored in the District Office. When other types of bonds are used, the original bond(s) will be forwarded to the Finance Office immediately after loan closing.

(c) *Multiple advances—bond(s).* When temporary paper, such as bond anticipation notes or interim receipts, is used to conform with the multiple advance requirement, the original temporary paper will be forwarded to the Finance Office after each advance is made to the borrower. The borrower's case number will be entered in the upper righthand corner of such paper by the District Office. The permanent debt instrument(s) should be forwarded to the Finance Office as soon as possible after the last advance is made except that for promissory notes and single instrument bonds fully registered as to principal and interest, the original will be retained in the District Office and a copy will be forwarded to the Finance Office.

(d) *Bond registration record.* Form FmHA or its successor agency under Public Law 103-354 442-28, "Bond Registration Book," may be used as a guide to assist borrowers in the preparation of a bond registration book in those cases where a registration book is required and a book is not provided in connection with the printing of the bonds.

(e) *Disposition of title evidence.* All title evidence other than the opinion of title, mortgage title insurance policy, and water stock certificates will be returned to the borrower when the loan has been closed.

(f) *Material for State Office.* When the loan has been closed, the District Director will submit to the State Director:

- (1) The complete docket; and
- (2) A statement covering information other than the completion of legal doc-

uments showing what was done in carrying out loan closing instructions.

(g) *State Office review of loan closing.* The State Director will review the District Director's statement concerning loan closing, the security instruments, and other documents used in closing to determine whether the transaction was closed properly. All material submitted by the District Director, including the executed contract documents (if required by OGC) with the certification of the borrower's attorney, along with a statement by the State Director that all administrative requirements have been met, will be referred to OGC for post-closing review. OGC will review the submitted material to determine whether all legal requirements have been met. OGC's review of FmHA or its successor agency under Public Law 103-354's standard forms will be only for proper execution thereof, unless the State Director brings specific questions or deviations to the attention of OGC. It is not expected that facility development including construction will be held up pending receipt of the opinion from OGC. When the opinion from OGC is received, the State Director will advise the District Director of any deficiencies that must be corrected and return all material that was submitted for review.

(h) *Safeguarding bond shipments.* FmHA or its successor agency under Public Law 103-354 personnel will follow the procedures for safeguarding mailings and deliveries of bonds and coupons outlined in FmHA Instruction 2018-E (available in any FmHA or its successor agency under Public Law 103-354 office), whenever they mail or deliver these items.

(i) *Water stock certificates.* Water stock certificates will be filed in the loan docket in the District Office.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988]

#### **§ 1942.9 Planning, bidding, contracting, and constructing.**

(a) *Review of construction plans and specifications.* All plans and specifications will be submitted as soon as available to the State Office for review and comments.

(b) *Contract approval.* The State Director or designee is responsible for approving all construction contracts using legal advice and guidance of OGC as necessary. The National Office must concur with the use of a contracting method under §1942.18(1) of this subpart exceeding \$250,000. When an applicant requests such concurrence, the State Director will submit the following to the National Office:

(1) State Director's and Rural Development engineer/architect's comments and recommendations, and if non-competitive negotiation per §1942.18(k)(4) is accepted by the Agency, submit an evaluation of previous work of the proposed construction firm.

(2) Regional attorney's opinion and comments regarding the legal adequacy of the proposed procurement method and proposed contract documents.

(3) Copy of owner's written request and description of the procurement method proposed.

(4) Copy of the proposed contract.

(c) *Bid irregularities.* Any irregularities in the bids received or other matters pertaining to the contract award having legal implications will be cleared with OGC before the State Director consents to the contract award.

(d) *Noncompliance.* State Directors, upon receipt of information indicating borrowers or their officers, employees, or agents are not performing in compliance with §1942.18(j)(1) of this subpart, may request the Regional Office of the Inspector General (OIG) to investigate the matter and provide a report. The State Director is responsible for resolving the issue.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988; 77 FR 29539, May 18, 2012]

**§§ 1942.10–1942.11 [Reserved]**

**§ 1942.12 Loan cancellation.**

Loans which have been approved and obligations which have been established may be canceled before closing as follows:

(a) *Form Rural Development 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation."* The Rural Development Manager or State Director may

prepare and execute Form Rural Development 1940–10, Cancellation of U.S. Treasury Check and/or Obligation, in accordance with the Forms Manual Insert (FMI). If the disbursement has been received or is subsequently received in the Area Office, the Rural Development Manager will return it as prescribed in Rural Development Instruction 2018–D.

(b) *Notice of cancellation.* If the docket has been forwarded to Office of General Counsel that office will be notified of the cancellation by copy of Form Rural Development 1940–10. Any application for title insurance, if ordered, will be cancelled. The borrower's attorney and engineer/architect, if any, should be notified of the cancellation. The Rural Development Manager may provide the borrower's attorney and engineer/architect with a copy of the notification to the applicant. The State Director will notify the Director of Legislative Affairs and Public Information by telephone or electronic mail and give the reasons for such cancellation.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 26589, July 14, 1988; 54 FR 39727, Sept. 28, 1989; 59 FR 54788, Nov. 2, 1994; 70 FR 19254, Apr. 13, 2005]

**§ 1942.13 Loan servicing.**

Loans will be serviced under subpart E of part 1951 of this chapter.

**§ 1942.14 Subsequent loans.**

Subsequent loans will be processed under this subpart.

**§ 1942.15 Delegation and redelegation of authority.**

The State Director is responsible for implementing the authorities in this subpart and for issuing State supplements redelegating authorities. Loan and grant approval authority is in Subpart A of Part 1901 of this chapter. Except for loan and grant approval authority, Rural Development Manager may redelegate their duties to qualified staff members.

[70 FR 19254, Apr. 13, 2005]

**§ 1942.16 State supplements and guides.**

State Directors will obtain National Office clearance for all State supplements and guides under FmHA Instruction 2006-B (available in any FmHA or its successor agency under Public Law 103-354 office).

(a) *State supplements.* State Directors may supplement this subpart to meet State and local laws and regulations and to provide for orderly application processing and efficient service to applicants. State supplements shall not contain any requirements pertaining to bids, contract awards, and materials more restrictive than those in § 1942.18 of this subpart.

(b) *State guides.* State Directors may develop guides for use by applicants if the guides to this subpart are not adequate. State Directors may prepare guides for items needed for the application; items necessary for the docket; and items required prior to loan closing or start of construction.

**§ 1942.17 Community facilities.**

(a) *General.* This section includes information and procedures specifically designed for use by applicants, including their professional consultants and/or agents who provide such assistance and services as architectural, engineering, financial, legal, or other services related to application processing and facility planning and development. This section is made available as needed for such use. It includes FmHA or its successor agency under Public Law 103-354 policies and requirements pertaining to loans for community facilities. It provides applicants with guidance for use in proceeding with their application. FmHA or its successor agency under Public Law 103-354 shall cooperate fully with appropriate State agencies to give maximum support of the State's strategies for development of rural areas.

(b) *Eligibility.* Financial assistance to areas or communities adjacent to, or closely associated with, nonrural areas is limited by § 1942.17(c) of this subpart.

(1) *Applicant.* (i) A public body, such as a municipality, county, district, authority, or other political subdivision of a state.

(A) Loans for water or waste disposal facilities will not be made to a city or town with a population in excess of 10,000 inhabitants, according to the latest decennial Census of the United States.

(B) Loans for essential community facilities will not be made to a city or town with a population in excess of 20,000 inhabitants according to the latest decennial Census of the United States.

(ii) An organization operated on a not-for-profit basis, such as an association, cooperative, and private corporation. Applicants organized under the general profit corporation laws may be eligible if they actually will be operated on a not-for-profit basis under their charter, bylaws, mortgage, or supplemental agreement provisions as may be required as a condition of loan approval. Essential community facility applicants other than utility-type must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:

(A) Association with or controlled by a local public body or bodies, or broadly based ownership and controlled by members of the community.

(B) Substantial public funding through taxes, revenue bonds, or other local Government sources, and/or substantial voluntary community funding, such as would be obtained through a community-wide funding campaign.

(iii) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes.

(2) *Facility.* (i) Facilities must be located in rural areas, except for utility-type services such as water, sewer, natural gas, or hydroelectric, serving both rural and non-rural areas. In such cases, FmHA or its successor agency under Public Law 103-354 funds may be used to finance only that portion serving rural areas, regardless of facility location.

(ii) Essential community facilities must primarily serve rural areas.

(iii) For water or waste disposal facilities, the terms *rural* and *rural area*

will not include any area in any city or town with a population in excess of 10,000 inhabitants, according to the latest decennial Census of the United States.

(iv) For essential community facilities, the terms *rural* and *rural area* will not include any area in any city or town with a population in excess of 20,000 inhabitants, according to the latest decennial Census of the United States.

(3) *Credit elsewhere.* Applicants must certify in writing and FmHA or its successor agency under Public Law 103-354 shall determine and document that the applicant is unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms.

(4) *Legal authority and responsibility.* Each applicant must have or will obtain the legal authority necessary for constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the proposed loan. The applicant shall be responsible for operating, maintaining, and managing the facility, and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be exercised by the applicant even though the facility may be operated, maintained, or managed by a third party under contract, management agreement, or written lease. Leases may be used when this is the only feasible way to provide the service and is the customary practice. Management agreements should provide for at least those items listed in guide 24 of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office). Such contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.

(5) *Refinancing FmHA or its successor agency under Public Law 103-354 debt.* FmHA or its successor agency under Public Law 103-354 shall require an agreement that if at any time it shall appear to the Government that the borrower is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private cred-

it sources, at reasonable rates and terms for loans for similar purposes and periods of time, the borrower will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan.

(6) Expanded eligibility for timber-dependent communities in Pacific Northwest. In the Pacific Northwest, defined as an area containing national forest covered by the Federal document entitled, "Forest Plan for a Sustainable Economy and a Sustainable Environment," dated July 1, 1993; the population limits contained §1942.17(b) are expanded to include communities with not more than 25,000 inhabitants until September 30, 1998, if:

(i) Part or all of the community lies within 100 miles of the boundary of a national forest covered by the Federal document entitled, "Forest Plan for a Sustainable Economy and a Sustainable Environment," dated July 1, 1993; and

(ii) The community is located in a county in which at least 15 percent of the total primary and secondary labor and proprietor income is derived from forestry, wood products, or forest-related industries such as recreation and tourism.

(c) *Priorities—(1) Truly rural areas.* FmHA or its successor agency under Public Law 103-354 program assistance will be directed toward truly rural areas and rural communities. Normally, priority will not be given to preapplications for projects that will serve other than truly rural areas. Truly rural areas are areas other than densely settled areas or communities adjacent to, or closely associated with, a city or town with a population exceeding 10,000 residents for water or waste disposal assistance, or 20,000 residents for essential community facility assistance. When determining whether a rural area or rural community is adjacent to, or closely associated with, a city or town with a population exceeding 10,000 residents for water and waste disposal, or 20,000 residents for essential community facility assistance, minor open spaces such as those created by physical or legal barriers, commercial or industrial development,

parks, areas reserved for convenience or appearance, or narrow strips of cultivated land, will be disregarded. An area or community shall be considered adjacent to or closely related with a nonrural area when it constitutes for general, social, and economic purposes a single community having a contiguous boundary.

(2) *Project selection process.* The following paragraphs indicate items and conditions which must be considered in selecting preapplications for further development. When ranking eligible preapplications for consideration for limited funds, FmHA or its successor agency under Public Law 103-354 officials must consider the priority items met by each preapplication and the degree to which those priorities are met, and apply good judgement.

(i) *Preapplications.* The preapplication and supporting information submitted with it will be used to determine the proposed project's priority for available funds.

(ii) *State Office review.* All preapplications will be reviewed and scored and Form AD-622, "Notice of Preapplication Review Action," issued within the time limits in § 1942.2(a)(2)(iv) of this subpart. When considering authorizing the development of an application for funding, the State Director should consider the remaining funds in the State allocation, and the anticipated allocation of funds for the next fiscal year as well as the amount of time necessary to complete that application. Applicants whose preapplications are found to be ineligible will be so advised. These applicants will be given adverse notice through Form AD-622 and advised of their appeal rights under subpart B of part 1900 of this chapter. Those applicants with eligible lower scoring preapplications which obviously cannot be funded within an eighteen month period of time, and are not within 150 percent of the State's allocation, should be notified that funds are not available; and requested to advise whether they wish to have their preapplication maintained in an active file for future consideration. The State Director may request an additional allocation of funds from the National Office for such preapplications. Such requests will be

considered along with all others on hand.

(iii) *Selection priorities.* The priorities described below will be used by the State Director to rate preapplications. The priorities should be applied to water and waste disposal or community facilities preapplications as directed. The format found in part I of guide 26 of this subpart should be followed in scoring each preapplication. A copy of the score sheet should be placed in the case file for future reference.

(A) *Population priorities.* The following priorities apply to both Water and Waste Disposal and Community Facilities preapplications. Points will be distributed as indicated.

(1) The proposed project is located in a rural community having a population not in excess of 2,500—25 points.

(2) The proposed project is located in a rural community having a population not in excess of 5,500—20 points. (Points under this priority should not be assigned to a preapplication if points were assigned under paragraph (c)(2)(iii) (A)(1) of this section.)

(B) *Health priorities.* Points will be distributed as indicated.

(1) Water and Waste Disposal preapplications only. The proposed project is:

(i) Needed to alleviate the sudden unexpected diminution or deterioration of a water supply, or to meet health or sanitary standards which pertain to a community's water supply—25 points.

(ii) Required to correct an inadequate waste disposal system due to unexpected occurrences, or to meet health or sanitary standards which pertain to a community's waste disposal system—25 points.

(2) Community Facility preapplication only. The proposed project is required either to correct a health or sanitary problem, or to meet a health or sanitary standard—25 points.

(C) *Income priorities.* The following priorities apply to both Water and Waste Disposal and Community Facilities preapplications. Points will be distributed as indicated. The median income of the population to be served by the proposed facility is:

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(1) Less than the poverty line for a family of four, as defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), or less than 80 percent of the statewide non-metropolitan median household income—25 points.

(2) Equal to or more than the poverty line and between 80% and 100%, inclusive, of the State's nonmetropolitan median household income—20 points.

(D) *Other factors.* Points will be distributed as indicated.

(1) Water and Waste Disposal preapplications only. The proposed project will: merge ownership, management, and operation of smaller facilities providing for more efficient management and economical service; and/or enlarge, extend, or otherwise modify existing facilities to provide service to additional rural residents—10 points.

(2) Community Facilities preapplications only. The purpose of the proposed project is to construct, enlarge, extend or otherwise improve the following types of facilities. (Select only the factor most applicable to the proposed project.)

(i) Public safety—10 points. (Examples include police services and fire, rescue and ambulance services as authorized by subpart C of this part 1942.)

(ii) Health care—5 points. (Examples include clinics, nursing homes, convalescent facilities, and hospital projects designed to make the facility conform with life/safety codes, medicare and medicaid requirements, and minor expansions needed to meet the immediate requirements of the community. Points under this authority should not be awarded to a preapplication if points were awarded under §1942.17(c)(2)(iii)(B)(2) of this subpart.)

(3) Water and Waste Disposal and Community Facilities preapplications.

(i) Applicant is a public body or Indian tribe—5 points.

(ii) Project is located in a “truly rural area” as described in §1942.17(c)(1) of this subpart—10 points.

(iii) Amount of joint financing committed to the project is:

(a) 20% or more private, local or state funds except federal funds channeled through a state agency—10 points.

(b) 5%–19% private, local or state funds except federal funds channeled through a state agency—5 points.

(E) In certain cases the State Director may assign up to 15 points to a preapplication, in addition to those that may be scored under paragraphs (c)(2)(iii) (A) through (D), of this section. These points are primarily intended to address an unforeseen exigency or emergency, such as the loss of a community facility due to accident or natural disaster or the loss of joint financing if FmHA or its successor agency under Public Law 103–354 funds are not committed in a timely fashion. However, the points may also be awarded to projects in order to improve compatibility/coordination between FmHA or its successor agency under Public Law 103–354's and other agencies' selection systems and to assist those projects that are the most cost effective. A written justification must be prepared and placed in the project file each time the State Director assigns these points.

(iv) *Results of State Office review.* After completing the review, the State Director will normally select the eligible preapplications with the highest scores for further processing. In cases where preliminary cost estimates indicate that an eligible, high scoring preapplication is unfeasible or would require an amount of funding from FmHA or its successor agency under Public Law 103–354 that exceeds either 25 percent of a State's current annual allocation or an amount greater than that remaining in the State's allocation, the State Director may instead select the next lower scoring preapplication(s) for further processing provided the high scoring applicant is notified of this action and given an opportunity to revise the proposal and resubmit it. If it is found that there is no effective way to reduce costs, the State Director, after consultation with applicant, may submit a request for an additional allocation of funds for the proposed project to the National Office. The request should be submitted during the fiscal year in which obligation is anticipated. Such request will be considered along with all others on hand. A written justification must be prepared and placed in the project file

when an eligible preapplication with a higher rating is not selected for further processing. The State Director will notify the District Director of the results of the review action. The State Director will return the preapplication information with an authorization for the District Director to prepare and issue Form AD-622 in accordance with § 1942.2(a)(4) of this subpart. Priority will be given to those preapplications and applications for funding which meet criteria in § 1942.17(c)(2)(iii)(A) (1) or (2); and the criteria in § 1942.17(c) (2)(iii)(B)(1) (i) or (ii) or (B)(2) of this subpart.

(v) *Application development.* Applications should be developed expeditiously following good management practices. Applications that are not developed in a reasonable period of time taking into account the size and complexity of the proposed project may be removed from the State's active file. Applicants will be consulted prior to taking such action.

(vi) *Project obligations.* To ensure efficient use of resources, obligations should occur in a timely fashion throughout the fiscal year. Projects may be obligated as their applications are completed and approved.

(vii) *Requests for additional funding.* All requests for additional allocations of funds submitted to the National Office must follow the formats found in parts I and II of guide 26. In selecting projects for funding at the National Office level, additional points may be scored based on the priority assigned to the project by the State Office. These points will be scored in the manner shown below. Only the three highest priority projects can score points. In addition, the Administrator may assign up to 15 additional points to account for items such as geographic distribution of funds and emergency conditions caused by economic problems or natural disasters.

Priority	Points
1 .....	5
2 .....	3
3 .....	1

(viii) *Cost overruns.* A preapplication may receive consideration for funding before others at the State Office level or at the National Office level, if funds

are not available in the State Office, when it is a subsequent request for a previously approved project which has encountered cost overruns due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding or other means.

(d) *Eligible loan purposes.* (1) Funds may be used:

(i) To construct, enlarge, extend, or otherwise improve water or waste disposal and other essential community facilities providing essential service primarily to rural residents and rural businesses. Rural businesses would include facilities such as educational and other publicly owned facilities.

(A) *Water or waste disposal facilities* include water, sanitary sewerage, solid waste disposal, and storm waste-water facilities.

(B) *Essential community facilities* are those public improvements requisite to the beneficial and orderly development of a community operated on a non-profit basis including but not limited to:

(1) Health services;  
(2) Community, social, or cultural services;

(3) Transportation facilities, such as streets, roads, and bridges;

(4) Hydroelectric generating facilities and related connecting systems and appurtenances, when not eligible for Rural Electrification Administration (REA) financing;

(5) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) when not eligible for Rural Electrification Administration financing;

(6) Natural gas distribution systems; and

(7) Industrial park sites, but only to the extent of land acquisition and necessary site preparation, including access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems, or business and industrial buildings.

(C) *Otherwise improve* includes but is not limited to the following:

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(1) The purchase of major equipment, such as solid waste collection trucks and X-ray machines, which will in themselves provide an essential service to rural residents;

(2) The purchase of existing facilities when it is necessary either to improve or to prevent loss of service;

(3) Payment of tap fees and other utility connection charges as provided in utility purchase contracts prepared under § 1942.18(f) of this subpart.

(ii) To construct or relocate public buildings, roads, bridges, fences, or utilities, and to make other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (d)(1)(i) of this section.

(iii) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (d)(1)(i) of this section.

(iv) To pay the following expenses, but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraphs (d)(1)(i), (d)(1)(ii) and (d)(1)(iii) of this section.

(A) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(B) Interest on loans until the facility is self-supporting, but not for more than three years unless a longer period is approved by the National Office; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than two years unless a longer period is approved by the National Office; and interest on interim financing, including interest charges on interim financing from sources other than FmHA or its successor agency under Public Law 103-354.

(C) Costs of acquiring interest in land; rights, such as water rights, leases, permits, rights-of-way; and other evidence of land or water control necessary for development of the facility.

(D) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(E) Initial operating expenses for a period ordinarily not exceeding one year when the borrower is unable to pay such expenses.

(F) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(1) The debts being refinanced are a secondary part of the total loan;

(2) The debts are incurred for the facility or service being financed or any part thereof;

(3) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(G) Prepay costs for which FmHA or its successor agency under Public Law 103-354 grant funds were obligated provided there is:

(1) No conflict with the loan resolution, State statutes, or any other loan requirements; and

(2) Full documentation showing that:

(i) Loan funds will only be utilized on a temporary basis; and

(ii) All FmHA or its successor agency under Public Law 103-354 loan funds are restored at a later date for purpose(s) for which they were obligated.

(v) To pay obligations for construction incurred before loan approval. Construction work should not be started and obligations for such work or materials should not be incurred before the loan is approved. However, if there are compelling reasons for proceeding with construction before loan approval, applicants may request FmHA or its successor agency under Public Law 103-354 approval to pay such obligations. Such requests may be approved if FmHA or its successor agency under Public Law 103-354 determines that:

(A) Compelling reasons exist for incurring obligations before loan approval; and

(B) The obligations will be incurred for authorized loan purposes; and

(C) Contract documents have been approved by FmHA or its successor agency under Public Law 103-354; and

(D) All environmental requirements applicable to FmHA or its successor agency under Public Law 103-354 and the applicant have been met; and

(E) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic, material, or other liens that may attach to the security property. FmHA or its successor agency under Public Law 103-354 may authorize payment of such obligations at the time of loan closing. FmHA or its successor agency under Public Law 103-354's authorization to pay such obligations, however, is on the condition that it is not committed to make the loan; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all loan approval requirements. The applicant's request and FmHA or its successor agency under Public Law 103-354 authorization for paying such obligations shall be in writing. If construction is started without FmHA or its successor agency under Public Law 103-354 approval, post approval in accordance with this section may be considered.

(2) Funds may not be used to finance:

(i) On-site utility systems or business and industrial buildings in connection with industrial parks.

(ii) Facilities to be used primarily for recreation purposes.

(iii) Community antenna television services or facilities.

(iv) Electric generation or transmission facilities or telephone systems, except as provided in paragraph (d)(1)(i)(B)(4), or (d)(1)(i)(B)(5) of this section; or extensions to serve a particular essential community facility as provided in paragraph (d)(1)(ii) or (d)(1)(iii) of this section.

(v) Facilities which are not modest in size, design, and cost.

(vi) Loan or grant finder's fees.

(vii) Projects located within the Coastal Barriers Resource System that do not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, Pub. L. 97-348.

(viii) New combined sanitary and storm water sewer facilities.

(ix) That portion of a water and/or waste disposal facility normally provided by a business or industrial user.

(e) *Facilities for public use.* All facilities financed under the provisions of this subpart shall be for public use.

(1) Utility-type service facilities will be installed so as to serve any user within the service area who desires service and can be feasibly and legally served. Applicants and borrowers must obtain written concurrence of the FmHA or its successor agency under Public Law 103-354 prior to refusing service to such user. Upon failure to provide service which is reasonable and legal, such user shall have direct right of action against the applicant/borrower. A notice of the availability of this service should be given by the applicant/borrower to all persons living within the area who can feasibly and legally be served by the phase of the project being financed.

(i) If a mandatory hookup ordinance will be adopted, the required bond ordinance or resolution advertisement will be considered adequate notification.

(ii) When any portion of the income will be derived from user fees and a mandatory hookup ordinance will not be adopted, each potent user will be afforded an opportunity to request service by signing a Users Agreement.

Those declining service will be afforded an opportunity to sign a statement to such effect. FmHA or its successor agency under Public Law 103-354 has guides available for these purposes in all FmHA or its successor agency under Public Law 103-354 offices.

(2) In no case will boundaries for the proposed service area be chosen in such a way that any user or area will be excluded because of race, color, religion, sex, marital status, age, handicap, or national origin.

(3) This does not preclude:

(i) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time; and

(ii) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system and not by considering the cost of separate extensions to or parts thereof; the applicant publicly announces a plan for extending service to areas not initially receiving service from the system; and potential users located in the areas not to be initially served receive written notice from the applicant that service

will not be provided until such time as it is economically feasible to do so, and

(iii) Extending services to industrial areas when service is made available to users located along the extensions.

(4) The State Director will determine that, when feasibly and legally possible, inequities within the proposed project's service area for the same type service proposed (*i.e.*, water or waste disposal) will be remedied by the owner on or before completion of the project that includes FmHA or its successor agency under Public Law 103–354 funding. Inequities are defined as flagrant variations in availability, adequacy or quality of service. User rate schedules for portions of existing systems that were developed under different financing, rates, terms or conditions, as determined by the State Director, do not necessarily constitute inequities.

(5) Before a loan is made to an applicant other than a public body, for other than utility type projects, the articles of incorporation or loan agreement will include a condition similar to the following:

In the event of dissolution of this corporation, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the corporation shall go and be distributed to one or more nonprofit corporations or public bodies as may be selected by the board of directors of this corporation and approved by at least 75 percent of the users or members to be used for, and devoted to, the purpose of a community facility project or other purpose to serve the public welfare of the community. In no event shall any of the assets or property, in the event of dissolution thereof, go or be distributed to members, directors, stockholders, or others having financial or managerial interest in the corporation either for the reimbursement of any sum subscribed, donated or contributed by such members or for any other purposes, provided that nothing herein shall prohibit the corporation from paying its just debts.

(f) *Rates and terms*—(1) *General*. Each loan will bear interest at the rate prescribed in RD Instruction 440.1, exhibit B (available in any Rural Development office). The interest rates will be set by Rural Development at least for each quarter of the fiscal year. All rates will be adjusted to the nearest one-eighth of 1 percent. The applicant may submit a written request prior to loan closing that the interest rate charged on the

loan be the lower of the rate in effect at the time of loan approval or the rate in effect at the time of loan closing. If the interest rate is to be that in effect at loan closing, the interest rate charged on a loan involving multiple advances of Rural Development funds, using temporary debt instruments, shall be that in effect on the date when the first temporary debt instrument is issued. If no written request is received from the applicant prior to loan closing, the interest rate charged on the loan will be the rate in effect at the time of loan approval.

(2) *Poverty line rate*. The poverty line interest rate will not exceed 5 per centum per annum. The provisions of paragraph (f)(2)(i) of this section do not apply to health care and related facilities that provide direct health care to the public. Otherwise, all loans must comply with the following conditions:

(i) The primary purpose of the loan is to upgrade existing facilities or construct new facilities required to meet applicable health or sanitary standards. Documentation will be obtained from the appropriate regulatory agency with jurisdiction to establish the standard, to verify that a bonafide standard exists, what that standard is, and that the proposed improvements are needed and required to meet the standard; and

(ii) The median household income of the service area is below the poverty line for a family of four, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), or below 80 percent of the Statewide nonmetropolitan median household income.

(3) *Intermediate rate*. The intermediate interest rate will be set at the poverty line rate plus one-half of the difference between the poverty line rate and the market rate, not to exceed 7 percent per annum. It will apply to loans that do not meet the requirements for the poverty line rate and for which the median household income of the service area is below the poverty line or not more than 100 percent of the nonmetropolitan median household income of the State.

(4) *Market rate*. The market interest rate will be set using as guidance the average of the Bond Buyer Index for

the four weeks prior to the first Friday of the last month before the beginning of the quarter. The market rate will apply to all loans that do not qualify for a different rate under paragraph (f)(2) or (f)(3) of this section. It may be adjusted as provided in paragraph (f)(5) of this section.

(5) *Prime farmland.* For essential community facilities loans, the rate indicated by paragraphs (f)(2), (f)(3) or (f)(4) of this section will be increased by two per centum per annum if the project being financed will involve the use of, or construction on, prime or unique farmland in accordance with FmHA Instruction 440.1, exhibits B and J (available in any FmHA or its successor agency under Public Law 103-354 office).

(6) *Income determination.* The income data used to determine median household income should be that which most accurately reflects the income of the service area. The service area is that area reasonably expected to be served by the facility being financed by FmHA or its successor agency under Public Law 103-354. The median household income of the service area and the non-metropolitan median household income of the State will be determined from income data from the most recent decennial census of the U.S. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented and the applicant may furnish, or FmHA or its successor agency under Public Law 103-354 may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The non-metropolitan median household income of the State may only be updated on a national basis by the FmHA or its successor agency under Public Law 103-354 National Office. This will be done only when median household income data for the same year for all Bureau of the Census areas is available from the Bureau of the Census or other reliable sources. Bureau of the Census areas would include areas such as: Counties,

County Subdivisions, Cities, Towns, Townships, Boroughs, and other places.

(7) *Repayment terms.* The loan repayment period shall not exceed the useful life of the facility, State statute or 40 years from the date of the note(s) or bond(s), whichever is less. Where FmHA or its successor agency under Public Law 103-354 grant funds are used in connection with an FmHA or its successor agency under Public Law 103-354 loan, the loan will be for the maximum term permitted by this subpart, State statute, or the useful life of the facility, whichever is less, unless there is an exceptional case where circumstances justify making an FmHA or its successor agency under Public Law 103-354 loan for less than the maximum term permitted. In such cases, the reasons must be fully documented. In all cases, including those in which the FmHA or its successor agency under Public Law 103-354 is jointly financing with another lender, the FmHA or its successor agency under Public Law 103-354 payments of principal and interest should approximate amortized installments.

(i) Principal payments may be deferred in whole or in part for a period not to exceed 36 months following the date the first interest installment is due. If for any reason it appears necessary to permit a longer period of deferment, the State Director may authorize such deferment with the prior approval of the National Office. Deferments of principal will not be used to:

(A) Postpone the levying of taxes or assessments.

(B) Delay collection of the full rates which the borrower has agreed to charge users for its services as soon as major benefits or the improvements are available to those users.

(C) Create reserves for normal operation and maintenance.

(D) Make any capital improvements except those approved by FmHA or its successor agency under Public Law 103-354 determined to be essential to the repayment of the loan or to the obtaining of adequate security thereof.

(E) Accelerate the payment of other debts.

(ii) *Payment date.* Loan payments will be scheduled to coincide with income

availability and be in accordance with State law. If consistent with the foregoing, monthly payments will be required and will be enumerated in the bond, other evidence of indebtedness, or other supplemental agreement. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months, respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided.

(g) *Security.* Loans will be secured by the best security position practicable in a manner which will adequately protect the interest of FmHA or its successor agency under Public Law 103-354 during the repayment period of the loan. Specific requirements for security for each loan will be included in a letter of conditions.

(1) *Joint financing security.* For projects utilizing joint financing, when adequate security of more than one type is available, the other lender may take one type of security with FmHA or its successor agency under Public Law 103-354 taking another type. For projects utilizing joint financing with the same security to be shared by FmHA or its successor agency under Public Law 103-354 and another lender, FmHA or its successor agency under Public Law 103-354 will obtain at least a parity position with the other lender. A parity position is to ensure that with joint security, in the event of default, each lender will be affected on a proportionate basis. A parity position will conform with the following unless an exception is granted by the National Office:

(i) *Terms.* It is not necessary for loans to have the same repayment terms to meet the parity requirements. Loans made by other lenders involved in joint financing with FmHA or its successor agency under Public Law 103-354 for facilities should be scheduled for repayment on terms similar to those customarily used in the State for financing such facilities.

(ii) *Use of trustee or other similar paying agent.* The use of a trustee or other similar paying agent by the other lender in a joint financing arrangement is acceptable to FmHA or its successor agency under Public Law 103-354. A trustee or other similar paying agent will not normally be used for the FmHA or its successor agency under Public Law 103-354 portion of the funding unless required to comply with State law. The responsibilities and authorities of any trustee or other similar paying agent on projects that include FmHA or its successor agency under Public Law 103-354 funds must be clearly specified by written agreement and approved by the FmHA or its successor agency under Public Law 103-354 State Director and Regional Attorney. FmHA or its successor agency under Public Law 103-354 must be able to deal directly with the borrower to enforce the provisions of loan and grant agreements and perform necessary servicing actions.

(iii) *Regular payments.* In the event adequate funds are not available to meet regular installments on parity loans, the funds available will be apportioned to the lenders based on the respective current installments of principal and interest due.

(iv) *Disposition of property.* Funds obtained from the sale or liquidation of secured property or fixed assets will be apportioned to the lenders on the basis of the pro rata amount loaned, but not to exceed their respective outstanding balances; provided, however, funds obtained from such sale or liquidation for a project that included FmHA or its successor agency under Public Law 103-354 grant funds will be apportioned as may be required by the grant agreement.

(v) *Protective advances.* Protective advances are payments made by a lender for items such as insurance or taxes, to protect the financial interest of the lender, and charged to the borrower's loan account. To the extent consistent with State law and customary lending practices in the area, repayment of protective advances made by either lender, for the mutual protection of

both lenders, should receive first priority in apportionment of funds between the lenders. To ensure agreement between lenders, efforts should be made to obtain the concurrence of both lenders before one lender makes a protective advance.

(2) *Public bodies.* Loans to such borrowers will be evidenced by notes, bonds, warrants, or other contractual obligations as may be authorized by relevant State statutes and by borrower's documents, resolutions, and ordinances.

(i) Utility-type facilities such as water and sewer systems, natural gas distribution systems, electric systems, etc., will be secured by:

(A) The full faith and credit of the borrower when the debt is evidenced by general obligation bonds; and/or

(B) Pledges of taxes or assessments; and/or

(C) Pledges of facility revenue and, when it is the customary financial practice in the State, liens will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts, and similar property rights, including leasehold interest, used or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds; and/or

(D) In those cases involving water and waste disposal projects where there is a substantial number of other than full-time users and facility costs result in a higher than reasonable rate for such full-time users, the loan will be secured by the full faith and credit of the borrower or by an assignment or pledge of taxes or assessments from public bodies or other organizations having the authority to issue bonds or pledge such taxes or assessments.

(ii) *Solid waste systems.* The type of security required will be based on State law and what is determined adequate to protect the interest of the United States during the repayment period of the loan.

(iii) *Other essential community facilities* other than utility type, such as those for public health and safety, social, and cultural needs and the like will meet the following security requirements:

(A) Such loans will be secured by one or a combination of the following and in the following order of preference:

(1) General obligation bonds.

(2) Assessments.

(3) Bonds which pledge other taxes.

(4) Bonds pledging revenues of the facility being financed when such bonds provide for the mandatory levy and collection of taxes in the event revenues later become insufficient to properly operate and maintain the facility and to retire the loan.

(5) Assignment of assured income which will be available for the life of the loan, from such sources as insurance premium rebates, income from endowments, irrevocable trusts, or commitments from industries, public bodies, or other reliable sources.

(6) Liens on real and chattel property when legally permissible and an assignment of the borrowers income from applicants who have been in existence and are able to present evidence of a financially successful operation of a similar facility for a period of time sufficient to indicate project success. National Office concurrence is required when the applicant has been in existence for less than five years or has not operated on a financially successful basis for five years immediately prior to loan application.

(7) Liens on real and chattel property when legally permissible and an assignment of income from an organization receiving Health and Human Services (HHS) operating grants under the "Memorandum of Understanding Between Health Resources and Services Administration, U.S. Department of Health and Human Services and Farmers Home Administration or its successor agency under Public Law 103-354, U.S. Department of Agriculture" (see FmHA Instruction 2000-T, available in any FmHA or its successor agency under Public Law 103-354 office.)

(8) Liens on real and chattel property when legally permissible and an assignment of income from an organization proposing a facility whose users receive reliable income from programs such as social security, supplemental security income (SSI), retirement plans, long-term insurance annuities, medicare or medicaid. Examples are homes for the

handicapped or institutions whose clientele receive State or local government assistance.

(9) When the applicant cannot meet the criteria in paragraph (g)(2)(iii)(A) (1) through (8) of this section, such proposals may be considered when all the following are met:

(i) The applicant is a new organization or one that has not operated the type of facility being proposed.

(ii) There is a demonstration of exceptional community support such as substantial financial contributions, and aggressive leadership in the formation of the organization and proposed project which indicates a commitment of the entire community.

(iii) The State Director has determined that adequate and dependable revenues will be available to meet all operation expenses, debt repayment, and the required reserve.

(iv) Prior National Office review and concurrence is obtained.

(B) Real estate and chattel property taken as security in accordance with paragraphs (g)(2)(iii)(A) (6) through (9) of this section:

(1) Ordinarily will include the property that is used in connection with the facility being financed; and

(2) Will have an as-developed present market value determined by a qualified appraiser equal to or exceeding the amount of the loan to be obtained plus any other indebtedness against the proposed security; and

(3) May have one of the lien requirements deleted when the loan approval official determines that the loan will be adequately secured with a lien on either the real estate or chattel property.

(C) When security is not available in accordance with paragraphs (g)(2)(iii)(A) (1) through (5) of this section and State law precludes securing the loan with liens on real or chattel property, the loan will be secured in the best manner consistent with State law and customary security taken by private lenders in the State, such as revenue bonds, and any other security the loan approval official determines necessary for a sound loan. Such loans will otherwise meet the requirements of (g)(2)(iii)(A) (6) through (9) of this section as appropriate.

(3) *Other-than-public bodies.* Loans to other-than-public body applicants will be secured as follows:

(i) Utility-type facilities eligible for FmHA or its successor agency under Public Law 103-354 assistance under paragraph (d) of this section such as water and sewer systems, natural gas distribution systems, electric systems, etc., will be secured as follows:

(A) Assignments of borrower income will be taken and perfected by filing, if legally permissible; and

(B) A lien will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts and similar property rights, including leasehold interest, used, or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds. In unusual circumstances where it is not feasible to obtain a lien on such land (such as land rights obtained from Federal or local government agencies, and from railroads) and the loan approval official determines that the interest of FmHA or its successor agency under Public Law 103-354 otherwise is secured adequately, the lien requirement may be omitted as to such land rights.

(C) When the loan is approved or the acquisition of real property is subject to an outstanding lien indebtedness, the next highest priority lien obtainable will be taken if the loan approval official determines that the loan is adequately secured.

(D) *Other security.* Promissory notes from individuals, stock or membership subscription agreements, individuals member's liability agreements, or other evidences of debt, as well as mortgages or other security instruments encumbering the private property of members of the association may be pledged or assigned to FmHA or its successor agency under Public Law 103-354 as additional security in any case in which the interest of FmHA or its successor agency under Public Law 103-354 will not be otherwise adequately protected.

(E) In those cases where there is a substantial number of other than full-time users and facility costs result in a higher than reasonable rate for such

full-time users, the loan will be secured by an assignment or pledge of general obligation bonds, taxes, or assessments from public bodies or other organizations having the authority to issue bonds or pledge such taxes, or assessments.

(ii) *Solid waste systems.* The type of security required will be based on State law and what is determined adequate to protect the interest of the United States during the repayment period of the loan.

(iii) *Essential community facilities* other than utility type such as those for public health and safety, social, and cultural needs and the like will meet the following security requirements:

(A) Such loans will be secured by one or a combination of the following and in the following order of preference:

(1) An assignment of assured income that will be available for the life of the loan, from sources such as insurance premium rebates, income from endowments, irrevocable trusts, or commitments from industries, public bodies, or other reliable sources.

(2) Liens on real and chattel property with an assignment of income from applicants who have been in existence and are able to present evidence of a financially successful operation of a similar facility for a period of time sufficient to indicate project success. National Office concurrence is required when the applicant has been in existence for less than five years or has not operated on a financially successful basis for at least the five years immediately prior to loan application.

(3) Liens on real and chattel property and an assignment of income from an organization receiving HHS operating grants under the "Memorandum of Understanding Between Health Resources and Services Administration, U.S. Department of Health and Human Services and Farmers Home Administration or its successor agency under Public Law 103-354, U.S. Department of Agriculture" (see FmHA Instruction 2000-T, available in any FmHA or its successor agency under Public Law 103-354 office).

(4) Liens on real and chattel property when legally permissible and an assignment of income from an organization proposing a facility whose users receive

reliable income from programs such as social security, supplemental security income (SSI), retirement plans, long-term insurance annuities, medicare or medicaid. Examples are homes for the handicapped or institutions whose clientele receive State or local government assistance.

(5) When the applicant cannot meet the criteria in paragraphs (g)(3)(iii)(A) (1) through (4) of this section, such proposals may be considered when all the following are met:

(i) The applicant is a new organization or one that has not operated the type of facility being proposed.

(ii) There is a demonstration of exceptional community support such as substantial financial contributions, and aggressive leadership in the formation of the organization and proposed project which indicates a commitment of the entire community.

(iii) The State Director has determined that adequate and dependable revenues will be available to meet all operation expenses, debt repayment, and the required reserve.

(iv) Prior National Office review and concurrence is obtained.

(6) Additional security may be taken as determined necessary by the loan approval official.

(B) Real estate and chattel property taken as security:

(1) Ordinarily will include the property that is used in connection with the facility being financed; and

(2) Will have an as-developed present market value determined by a qualified appraiser equal to or exceeding the amount of the loan to be obtained plus any other indebtedness against the proposed security; and

(3) May have one of the lien requirements deleted when the loan approval official determines that the loan will be adequately secured with a lien on either the real estate or the chattel property.

(h) *Economic feasibility requirements.* All projects financed under the provisions of this section must be based on taxes, assessments, revenues, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment.

An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the FmHA or its successor agency under Public Law 103-354 staff and approval official. If the primary use of the facility is by business and the success or failure of the facility is dependent on the business, then the economic viability of that business must be assessed. The number of users for a rural business will be based on equivalent dwelling units, which is the level of service provided to a typical rural residential dwelling.

(1) *Financial feasibility reports.* All applicants will be expected to provide a financial feasibility report prepared by a qualified firm or individual. These financial feasibility reports will normally be:

(i) Included as part of the preliminary engineer/architectural report using guides 6 through 10 as applicable; or

(ii) Prepared by a qualified firm or individual not having a direct interest in the management or construction of the facility using guide 5 when:

(A) The project will significantly affect the applicant's financial operations and is not a utility-type facility but is dependent on revenues from the facility to repay the loan; or

(B) It is specifically requested by FmHA or its successor agency under Public Law 103-354.

(2) *Applicants for loans for utility-type facilities* dependent on users fees for debt payment shall base their income and expense forecast on realistic user estimates in accordance with the following:

(i) In estimating the number of users and establishing rates or fees on which the loan will be based for new systems and for extensions or improvements to existing systems, consideration should be given to the following:

(A) An estimated number of maximum initial users should not be used when setting user fees and rates since it may be several years before all residents in the community will need the services provided by the system. In establishing rates a realistic number of initial users should be employed.

(B) User agreements from individual vacant property owners will not be considered when determining project feasibility unless:

(1) The owner has plans to develop the property in a reasonable period of time and become a user of the facility; and

(2) The owner agrees in writing to make a monthly payment at least equal to the proportionate share of debt service attributable to the vacant property until the property is developed and the facility is utilized on a regular basis. A bond or escrowed security deposit must be provided to guarantee this monthly payment and to guarantee an amount at least equal to the owner's proportionate share of construction costs. If a bond is provided, it must be executed by a surety company that appears on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State where the project is located. The guarantee shall be payable jointly to the borrower and the Farmers Home Administration or its successor agency under Public Law 103-354; and

(3) Such guarantee will mature not later than 4 years from the date of execution and will be finally due and payable upon default of a monthly payment or at maturity, unless the property covered by the guarantee has been developed and the facility is being utilized on a regular basis.

(C) Income from other vacant property owners will be considered only as extra income.

(ii) Realistic user estimates will be established as follows:

(A) Meaningful potential user cash contributions. Potential user cash contributions are required except:

(1) For users presently receiving service, or

(2) Where FmHA or its successor agency under Public Law 103-354 determines that the potential users as a whole in the applicant's service area cannot make cash contributions, or

(3) Where State statutes or local ordinances require mandatory use of the system and the applicant or legal entity having such authority agrees in writing to enforce such statutes, or ordinances.

(B) The amount of cash contributions required in paragraph (h)(2)(ii)(A) of this section will be set by the applicant and concurred in by FmHA or its successor agency under Public Law 103-354. Contributions should be an amount high enough to indicate sincere interest on the part of the potential user, but not so high as to preclude service to low income families. Contributions ordinarily should be an amount approximating one year's minimum user fee, and shall be paid in full before loan closing or commencement of construction, whichever occurs first. Once economic feasibility is ascertained based on a demonstration of meaningful potential user cash contributions, the contribution, membership fee or other fees that may be imposed are not a requirement of FmHA or its successor agency under Public Law 103-354 under this section. However, borrowers do have an additional responsibility relating to generating sufficient revenues as set forth in paragraph (n)(2)(iii) of this section.

(C) Enforceable user agreement. Except for users presently receiving service, an enforceable user agreement with a penalty clause is required unless State statutes or local ordinances require mandatory use of the system and the applicant or legal entity having such authority agrees in writing to enforce such statutes or ordinances.

(iii) In those cases where all or part of the borrower's debt payment revenues will come from user fees, applicants must provide a positive program to encourage connection by all users as soon as service is available. The program will be available for review and approval by FmHA or its successor agency under Public Law 103-354 before loan closing or commencement of construction, whichever occurs first. Such a program shall include:

(A) An aggressive information program to be carried out during the construction period. The borrower should send written notification to all signed users at least three weeks in advance of the date service will be available, stating the date users will be expected to have their connections completed, and the date user charges will begin.

(B) Positive steps to assure that installation services will be available.

These may be provided by the contractor installing the system, local plumbing companies, or local contractors.

(C) Aggressive action to see that all signed users can finance their connections. This might require collection of sufficient user contributions to finance connections. Extreme cases might necessitate additional loan funds for this purpose; however, loan funds should be used only when absolutely necessary and when approved by FmHA or its successor agency under Public Law 103-354 prior to loan closing.

(3) *Utility-type facilities for new developing communities or areas.* Developers are normally expected to provide utility-type facilities in new or developing areas and such facilities shall be installed in compliance with appropriate State statutes and regulations. FmHA or its successor agency under Public Law 103-354 financing will be considered to an eligible applicant in such cases when failure to complete development would result in an adverse economic condition for the rural area (not the community being developed); the proposal is necessary to the success of an area development plan; and loan repayment can be assured by:

(i) The applicant already having sufficient assured revenues to repay the loan; or

(ii) Developers providing a bond or escrowed security deposit as a guarantee sufficient to meet expenses attributable to the area in question until a sufficient number of the building sites are occupied and connected to the facility to provide enough revenues to meet operating, maintenance, debt service, and reserve requirements. Such guarantees from developers will meet the requirements in paragraph (h)(2)(i)(B) of this section; or

(iii) Developers paying cash for the increased capital cost and any increased operating expenses until the developing area will support the increased costs; or

(iv) The full faith and credit of a public body where the debt is evidenced by general obligation bonds; or

(v) The loan is to a public body evidenced by a pledge of tax assessments; or

(vi) The user charges can become a tax lien upon the property being served and income from such lien can be collected in sufficient time to be used for its intended purposes.

(i) *Reserve requirements.* Provision for the accumulation of necessary reserves over a reasonable period of time will be included in the loan documents and in assessments, tax levies, or rates charged for services. In those cases where statutes providing for extinguishing assessment liens of public bodies when properties subject to such liens are sold for delinquent State or local taxes, special reserves will be established and maintained for the protection of the borrower's assessment lien.

(1) *General obligation or special assessment bonds.* Ordinarily, the requirements for reserves will be considered to have been met if general obligation or other bonds which pledge the full faith and credit of the political subdivision are used, or special assessment bonds are used, and if such bonds provide for the annual collection of sufficient taxes or assessments to cover debt service, operation and maintenance, and a reasonable amount for emergencies and to offset the possible non-payment of taxes or assessments by a percentage of the property owners, or a statutory method is provided to prevent the incurrence of a deficiency.

(2) *Other than general obligation or special assessment bonds.* Each borrower will be required to establish and maintain reserves sufficient to assure that loan installments will be paid on time, for emergency maintenance, for extensions to facilities, and for replacement of short-lived assets which have a useful life significantly less than the repayment period of the loan. It is expected that borrowers issuing bonds or other evidences of debt pledging facility revenues as security will ordinarily plan their reserve to provide for a total reserve in an amount at least equal to one average loan installment. It is also expected the ordinarily such reserve will be accumulated at the rate of at least one-tenth of the total each year until the desired level is reached.

(j) *General requirements—(1) Membership authorization.* For organizations other than public bodies, the member-

ship will authorize the project and its financing except that the State Director may, with the concurrence of OGC, accept the loan resolution without such membership authorization when State statutes and the organization's charter and bylaws do not require such authorization; and

(i) The organization is well established and is operating with a sound financial base; or

(ii) For utility-type projects the members of the organization have all signed an enforceable user agreement with a penalty clause and have made the required meaningful user cash contribution, except for members presently receiving service or when State statutes or local ordinances require mandatory use of the facility.

(2) *Planning, bidding, contracting, constructing.* (See § 1942.18).

(3) *Insurance and fidelity bonds.* The purpose of FmHA or its successor agency under Public Law 103-354's insurance and fidelity bond requirements is to protect the government's financial interest based on the facility financed. The requirements below apply to all types of coverage determined necessary. The National Office may grant exceptions to normal requirements when appropriate justification is provided establishing that it is in the best interest of the applicant/borrower and will not adversely affect the government's interest.

(i) *General.* (A) Applicants must provide evidence of adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Adequate coverage in accordance with this section must then be maintained for the life of the loan. It is the responsibility of the applicant/borrower and not that of FmHA or its successor agency under Public Law 103-354 to assure that adequate insurance and fidelity bond coverage is maintained.

(B) Insurance and fidelity bond requirements by FmHA or its successor agency under Public Law 103-354 shall normally not exceed those proposed by the applicant/borrower if the FmHA or its successor agency under Public Law 103-354 loan approval or servicing official determines that proposed coverage

is adequate to protect the government's financial interest. Applicants/borrowers are encouraged to have their attorney, consulting engineer/architect, and/or insurance provider(s) review proposed types and amounts of coverage, including any deductible provisions. If the FmHA or its successor agency under Public Law 103-354 official and the applicant/borrower cannot agree on the acceptability of coverage proposed, a decision will be made by the State Director.

(C) The use of deductibles, *i.e.*, an initial amount of each claim to be paid by the applicant/borrower, may be allowed by FmHA or its successor agency under Public Law 103-354 providing the applicant/borrower has financial resources which would likely be adequate to cover potential claims requiring payment of the deductible.

(D) Borrowers must provide evidence to FmHA or its successor agency under Public Law 103-354 that adequate insurance and fidelity bond coverage is being maintained. This may consist of a listing of policies and coverage amounts in yearend reports submitted with management reports required under §1942.17(q)(2) or other documentation. The borrower is responsible for updating and/or renewing policies or coverage which expire between submissions to FmHA or its successor agency under Public Law 103-354. Any monitoring of insurance and fidelity bond coverage by FmHA or its successor agency under Public Law 103-354 is solely for the benefit of FmHA or its successor agency under Public Law 103-354, and does not relieve the applicant/borrower of its obligation under the loan resolution to maintain such coverage.

(ii) *Fidelity bond.* Applicants/borrowers will provide fidelity bond coverage for all persons who have access to funds. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. An exception may be granted by the State Director when funds relating to the facility financed are handled by another entity and it is determined that the entity has adequate coverage or the gov-

ernment's interest would otherwise be adequately protected.

(A) The amount of coverage required by FmHA or its successor agency under Public Law 103-354 will normally approximate the total annual debt service requirements for the FmHA or its successor agency under Public Law 103-354 loans.

(B) Form FmHA or its successor agency under Public Law 103-354 440-24, "Position Fidelity Schedule Bond" may be used. Similar forms may be used if determined acceptable to FmHA or its successor agency under Public Law 103-354. Other types of coverage may be considered acceptable if it is determined by FmHA or its successor agency under Public Law 103-354 that they fulfill essentially the same purpose as a fidelity bond.

(iii) *Insurance.* The following types of coverage must be maintained in connection with the project if appropriate for the type of project and entity involved:

(A) *Property insurance.* Fire and extended coverage will normally be maintained on all structures except as noted in paragraphs (j)(3)(iii)(A) (1) and (2) below. Ordinarily, FmHA or its successor agency under Public Law 103-354 should be listed as mortgagee on the policy when FmHA or its successor agency under Public Law 103-354 has a lien on the property. Normally, major items of equipment or machinery located in the insured structures must also be covered. Exceptions:

(1) Reservoirs, standpipes, elevated tanks, and other structures built entirely of noncombustible materials if such structures are not normally insured.

(2) Subsurface lift stations except for the value of electrical and pumping equipment therein.

(B) Liability and property damage insurance, including vehicular coverage.

(C) *Malpractice insurance.* The need and requirements for malpractice insurance will be carefully and thoroughly considered in connection with each health care facility financed.

(D) *Flood insurance.* Facilities located in special flood- and mudslide-prone areas must comply with the eligibility and insurance requirements of subpart

B of part 1806 of this chapter (FmHA Instruction 426.2).

(E) *Worker's compensation.* The borrower will carry worker's compensation insurance for employees in accordance with State laws.

(4) *Acquisition of land, easements, water rights, and existing facilities.* Applicants are responsible for acquisition of all property rights necessary for the project and will determine that prices paid are reasonable and fair. FmHA or its successor agency under Public Law 103-354 may require an appraisal by an independent appraiser or FmHA or its successor agency under Public Law 103-354 employee.

(i) *Title for land, rights-of-way, easements, or existing facilities.* The applicant must certify and provide a legal opinion relative to the title to rights-of-way and easements. Form FmHA or its successor agency under Public Law 103-354 442-21, "Rights-of-Way Certificate," and Form FmHA or its successor agency under Public Law 103-354 442-22, "Opinion of Counsel Relative to Rights-of-Way," may be used.

(A) *Rights-of-way and easements.* Applicants are responsible for and will obtain valid, continuous and adequate rights-of-way and easements needed for the construction, operation, and maintenance of the facility. Form FmHA or its successor agency under Public Law 103-354 442-20, "Right-of-Way Easement," may be used. When a site is for major structures for utility-type facilities such as a reservoir or pumping station and the applicant is able to obtain only a right-of-way or easement on such a site rather than a fee simple title, the applicant will furnish a title report thereon by the applicant's attorney showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the applicant to obtain and record such releases, consents or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the facility and give FmHA or its successor agency under Public Law 103-354 the required security.

(B) *Title for land or existing facilities.* Title to land essential to the successful

operation of facilities or title to facilities being purchased, must not contain any restrictions that will adversely affect the suitability, successful operation, security value, or transferability of the facility. Title opinions must be provided by the applicant's attorney. The opinions must be in sufficient detail to assess marketability of the property. Form FmHA or its successor agency under Public Law 103-354 1927-9, "Preliminary Title Opinion," and Form FmHA or its successor agency under Public Law 103-354 1927-10, "Final Title Opinion," may be used to provide the required title opinions. If other forms are used they must be reviewed and approved by FmHA or its successor agency under Public Law 103-354 and OGC.

(1) In lieu of receiving title opinions from the applicant's attorney, the applicant may use a title insurance company. If a title insurance company is used, the company must provide FmHA or its successor agency under Public Law 103-354 a title insurance binder, disclosing all title defects or restrictions, and include a commitment to issue a title insurance policy. The policy should be in an amount at least equal to the market value of the property as improved. The title insurance binder and commitment should be provided to FmHA or its successor agency under Public Law 103-354 prior to requesting closing instructions. FmHA or its successor agency under Public Law 103-354 will be provided a title insurance policy which will insure FmHA or its successor agency under Public Law 103-354's interest in the property without any title defects or restrictions which have not been waived by FmHA or its successor agency under Public Law 103-354.

(2) The loan approval official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility. If the District Director is the loan approval official and is unable to waive the defect or restriction, the title opinion or title insurance binder will be forwarded to the State Director. If the State Director, with the advice of the OGC, determines that the defect or restriction cannot be

waived, the defect or restriction must be removed.

(ii) *Water rights.* When legally permissible, an assignment will be taken on water rights owned or to be acquired by the applicant. The following will be furnished as applicable:

(A) A statement by the applicant's attorney regarding the nature of the water rights owned or to be acquired by the applicant (such as conveyance of title, appropriation and decree, application and permit, public notice and appropriation and use).

(B) A copy of a contract with another company or municipality to supply water; or stock certificates in another company which represents the right to receive water.

(iii) *Land purchase contract:* (A) A land purchase contract (known in some areas as a contract for deed) is an agreement between two or more parties which obligates the purchaser to pay the purchase price, gives the purchaser the rights of immediate possession, control, and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specified part of the purchase price.

(B) Applicants may obtain land through land purchase contracts when all of the following conditions are met:

(1) The applicant has exhausted all reasonable means of obtaining outright fee simple title to the necessary land.

(2) The applicant cannot obtain the land through condemnation.

(3) There are not other suitable sites available.

(4) National Office concurrence is obtained in accordance with paragraph (j)(4)(iii)(D)(2) of this section.

(C) The land purchase contract must provide for the transfer of ownership by the seller without any restrictions, liens or other title defects. The contract must not contain provisions for future advances (except for taxes, insurance, or other costs needed to protect the security), summary cancellations, summary forfeiture, or other clauses that may jeopardize the Government's interest or the purchaser's ability to pay the FmHA or its successor agency under Public Law 103-354 loan. The contract must provide that if the purchaser fails to make payment that FmHA or its successor agency

under Public Law 103-354 will be given at least 90 days written notice with an option to cure the default before the contract can be cancelled, terminated or foreclosed. Then FmHA or its successor agency under Public Law 103-354 must have the option of making the payment and charging it to the purchaser's account, making the payment and taking over the ownership of the purchase contract, or taking any other action necessary to protect the Government's interest.

(D) Prior to loan closing or the beginning of construction, whichever occurs first, the following actions must be taken in the order listed below:

(1) The land purchase contract and any appropriate title opinions must be reviewed by the Regional Attorney to determine if they are legally sufficient to protect the interest of the Government.

(2) The land purchase contract, the Regional Attorney's comments, and the State Director's recommendations must be submitted to the National Office for concurrence.

(3) The land purchase contract must be recorded.

(5) *Lease agreements.* Where the right of use or control of real property not owned by the applicant/borrower is essential to the successful operation of the facility during the life of the loan, such right will be evidenced by written agreements or contracts between the owner(s) of the property and the applicant/borrower. Lease agreements shall not contain provisions for restricted use of the site of facility, forfeiture or summary cancellation clauses and shall provide for the right to transfer and lease without restriction. Lease agreements will ordinarily be written for a term at least equal to the term of the loan. Such lease contracts or agreements will be approved by the FmHA or its successor agency under Public Law 103-354 loan approval official with the advice and counsel of the Regional Attorney, OGC, as to the legal sufficiency of such documents. A copy of the lease contract or agreement will be included in the loan docket.

(6) *Notes and bonds.* Notes and bonds will be completed on the date of loan

closing except for the entry of subsequent multiple advances where applicable. The amount of each note will be in multiples of not less than \$100. The amount of each bond will ordinarily be in multiples of not less than \$1,000.

(i) Form FmHA or its successor agency under Public Law 103-354 440-22, "Promissory Note (Association or Organization)," will ordinarily be used for loans to nonpublic bodies.

(ii) Section 1942.19 contains instructions for preparation of notes and bonds evidencing indebtedness of public bodies.

(7) *Environmental requirements.* Environmental requirements will be documented by FmHA or its successor agency under Public Law 103-354 in accordance with subpart G part 1940 of this chapter. The applicant will provide any information required.

(8) *Health care facilities.* The applicant will be responsible for obtaining the following documents:

(i) A statement from the responsible State agency certifying that the proposed health care facility is not inconsistent with the State Medical Facilities Plan.

(ii) A statement from the responsible State agency or regional office of the Department of Health and Services certifying that the proposed facility meets the standards in § 1942.18(d)(4).

(9) *Public information.* Applicants should inform the general public regarding the development of any proposed project. Any applicant not required to obtain authorization by vote of its membership or by public referendum, to incur the obligations of the proposed loan or grant, will hold at least one public information meeting. The public meeting must be held after the preapplication is filed and not later than loan approval. The meeting must give the citizenry an opportunity to become acquainted with the proposed project and to comment on such items as economic and environmental impacts, service area, alternatives to the project, or any other issue identified by FmHA or its successor agency under Public Law 103-354. The applicant will be required, at least 10 days prior to the meeting, to publish a notice of the meeting in a newspaper of general circulation in the service area, to post a

public notice at the applicant's principal office, and to notify FmHA or its successor agency under Public Law 103-354. The applicant will provide FmHA or its successor agency under Public Law 103-354 a copy of the published notice and minutes of the public meeting. A public meeting is not normally required for subsequent loans which are needed to complete the financing of the project.

(10) *Service through individual installation.* Community owned water or waste disposal systems may provide service through individual installations or small clusters of users within the applicant's service area. When individual installations or small clusters are proposed, the loan approval official should consider items such as: quantity and quality of the individual installations that may be developed; cost effectiveness of the individual facility compared with the initial and long term user cost on a central system; health and pollution problems attributable to individual facilities; operational or management problems peculiar to individual installations; and permit and regulatory agency requirements.

(i) Applicants providing service through individual facilities must meet the eligibility requirements in § 1942.17(b).

(ii) FmHA or its successor agency under Public Law 103-354 must approve the form of agreement between the owner and individual users for the installation, operation and payment for individual facilities.

(iii) If taxes or assessments are not pledged as security, owners providing service through individual facilities must obtain security as necessary to assure collection of any sum the individual user is obligated to pay the owner.

(iv) Notes representing indebtedness owed the owner by a user for an individual facility will be scheduled for payment over a period not to exceed the useful life of the individual facility or the loan, whichever is shorter. The interest rate will not exceed the interest rate charged the owner on the FmHA or its successor agency under Public Law 103-354 indebtedness.

(v) Owners providing service through individual or cluster facilities must obtain:

(A) Easements for the installation and ingress to and egress from the facility; and

(B) An adequate method for denying service in the event of nonpayment of user fees.

(11) *Funds from other sources.* FmHA or its successor agency under Public Law 103-354 loan funds may be used along with or in connection with funds provided by the applicant or from other sources. Since “matching funds” is not a requirement for FmHA or its successor agency under Public Law 103-354 loans, shared revenues may be used with FmHA or its successor agency under Public Law 103-354 funds for project construction.

(k) *Other Federal, State, and local requirements.* Each application shall contain the comments, necessary certifications and recommendations of appropriate regulatory or other agency or institution having expertise in the planning, operation, and management of similar facilities. Proposals for facilities financed in whole or in part with FmHA or its successor agency under Public Law 103-354 funds will be coordinated with appropriate Federal, State, and local agencies in accordance with the following:

(1) *Compliance with special laws and regulations.* Except as provided in paragraph (k)(2) of this section applicants will be required to comply with Federal, State, and local laws and any regulatory commission rules and regulations pertaining to:

(i) Organization of the applicant and its authority to construct, operate, and maintain the proposed facilities;

(ii) Borrowing money, giving security therefore, and raising revenues for the repayment thereof;

(iii) Land use zoning; and

(iv) Health and sanitation standards and design and installation standards unless an exception is granted by FmHA or its successor agency under Public Law 103-354.

(2) *Compliance exceptions.* If there are conflicts between this subpart and state or local laws or regulatory commission regulations, the provisions of this subpart will control.

(3) *State Pollution Control or Environmental Protection Agency Standards.* Water and waste disposal facilities will be designed, installed, and operated in such a manner that they will not result in the pollution of water in the State in excess of established standards and that any effluent will conform with appropriate State and Federal Water Pollution Control Standards. A certification from the appropriate State and Federal agencies for water pollution control standards will be obtained showing that established standards are met.

(4) *Consistency with other development plans.* FmHA or its successor agency under Public Law 103-354 financed facilities will not be inconsistent with any development plans of State, multi-jurisdictional areas, counties, or municipalities in which the proposed project is located.

(5) *State agency regulating water rights.* Each FmHA or its successor agency under Public Law 103-354 financed facility will be in compliance with appropriate State agency regulations which have control of the appropriation, diversion, storage and use of water and disposal of excess water. All of the rights of any landowners, appropriators, or users of water from any source will be fully honored in all respects as they may be affected by facilities to be installed.

(6) *Civil Rights Act of 1964.* All borrowers are subject to, and facilities must be operated in accordance with, title VI of the Civil Rights Act of 1964 and subpart E of part 1901 of this chapter, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by §1901.202(e) of subpart E of part 1901 of this chapter.

(7) *Title IX of the Education Amendments of 1972.* No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or education activity receiving FmHA or its successor agency under Public Law 103-354 financial assistance except as otherwise provided for in the Education Amendments of title IX. The

FmHA or its successor agency under Public Law 103-354 State Director will provide guidance and technical assistance to carry out the intent of this paragraph.

(8) *Section 504 of the Rehabilitation Act of 1973.* Under section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving FmHA or its successor agency under Public Law 103-354 financial assistance.

(9) *Age Discrimination Act of 1975.* This Act provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. This Act also applies to programs or activities funded under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 et. seq.). This Act does not apply to: (i) age distinctions contained in Federal, State or local statutes or ordinances adopted by an elected, general purpose legislative body which provide benefits or assistance based on age; (ii) establish criteria for participation in age-related terms; (iii) describe intended beneficiaries or target groups in age-related terms; and, (iv) any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA) (29 U.S.C. 801 et. seq.).

(1) *Professional services and contracts related to the facility—*(1) *Professional services.* Applicants will be responsible for providing the services necessary to plan projects including design of facilities, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Professional services of the following may be necessary: Engineer, architect, attorney, bond counsel, ac-

countant, auditor, appraiser, and financial advisory or fiscal agent (if desired by applicant). Contracts or other forms of agreement between the applicant and its professional and technical representatives are required and are subject to FmHA or its successor agency under Public Law 103-354 concurrence. Form FmHA or its successor agency under Public Law 103-354 1942-19, "Agreement for Engineering Services," may be used when appropriate. Guide 20, "Agreement for Engineering Services (FmHA or its successor agency under Public Law 103-354/EPA—Jointly Funded Projects)" may be used on projects jointly funded by FmHA or its successor agency under Public Law 103-354 and EPA. Guide 14 may be used in the preparation of the legal services agreement.

(2) *Bond counsel.* Unless otherwise provided by §1942.19(b), public bodies are required to obtain the service of recognized bond counsel in the preparation of evidence of indebtedness.

(3) *Contracts for other services.* Contracts or other forms of agreements for other services including management, operation, and maintenance will be developed by the applicant and presented to FmHA or its successor agency under Public Law 103-354 for review and approval. Management agreements should provide at least those items in guide 24.

(4) *Fees.* Fees provided for in contracts or agreements shall be reasonable. They shall be considered to be reasonable if not in excess of those ordinarily charged by the profession for similar work when FmHA or its successor agency under Public Law 103-354 financing is not involved.

(m) *Applying for FmHA or its successor agency under Public Law 103-354 loans—*

(1) *Preapplication.* Applicants desiring loans will file SF 424.2 and comments from the appropriate A-95 clearinghouse agency normally with the appropriate FmHA or its successor agency under Public Law 103-354 County Office. The County Supervisor will immediately forward all documents to the District Office. The District Director has prime responsibility for all community program loan making and servicing activities within the District.

(2) *Preapplication review.* Upon receipt of the preapplication, FmHA or its successor agency under Public Law 103-354 will tentatively determine eligibility including the likelihood of credit elsewhere at reasonable rates and terms and availability of FmHA or its successor agency under Public Law 103-354 loan funds. The determination as to availability of other credit will be made after considering present rates and terms available for similar proposals (not necessarily based upon rates and terms available from FmHA or its successor agency under Public Law 103-354); the repayment potential of the applicant; long-term cost to the applicant; and average user or other charges. In those cases where FmHA or its successor agency under Public Law 103-354 determines that loans at reasonable rates and terms should be available from commercial sources, FmHA or its successor agency under Public Law 103-354 will notify the applicant so that it may apply for such financial assistance. Such applicants may be reconsidered for FmHA or its successor agency under Public Law 103-354 loans upon their presenting satisfactory evidence of inability to obtain commercial financing at reasonable rates and terms.

(3) *Incurring obligations.* Applicants should not proceed with planning nor obligate themselves for expenditures until authorized by FmHA or its successor agency under Public Law 103-354.

(4) *Results of preapplication review.* After FmHA or its successor agency under Public Law 103-354 has reviewed the preapplication material and any additional material that may be requested, Form AD-622 will be sent to the applicant. Ordinarily the review will not exceed 45 days.

(5) *Application conference.* Before starting to assemble the application and after the applicant selects its professional and technical representatives, it should arrange with FmHA or its successor agency under Public Law 103-354 for an application conference to provide a basis for orderly application assembly. FmHA or its successor agency under Public Law 103-354 will provide applicants with a list of documents necessary to complete the appli-

cation. Guide 15 may be used for this purpose. Applications will be filed with the District Office.

(6) *Application completion and assembling.* This is the responsibility of the applicant with guidance from FmHA or its successor agency under Public Law 103-354. The applicant may utilize their professional and technical representatives or other competent sources.

(7) *Review of decision.* If an application is rejected, the applicant may request a review of this decision under subpart B of part 1900 of this chapter.

(n) *Actions prior to loan closing and start of construction—(1) Excess FmHA or its successor agency under Public Law 103-354 loan and grant funds.* If there is a significant reduction in project cost, the applicant's funding needs will be reassessed before loan closing or the start of construction, whichever occurs first. In such cases applicable FmHA or its successor agency under Public Law 103-354 forms, the letter of conditions, and other items will be revised. Decreases in FmHA or its successor agency under Public Law 103-354 funds will be based on revised project costs and current number of users, however, other factors including FmHA or its successor agency under Public Law 103-354 regulations used at the time of loan/grant approval will remain the same. Obligated loan or grant funds not needed to complete the proposed project will be deobligated.

(2) *Loan resolutions.* Loan resolutions will be adopted by both public and other-than-public bodies using Form FmHA or its successor agency under Public Law 103-354 1942-47, "Loan Resolution (Public Bodies)," or Form FmHA or its successor agency under Public Law 103-354 1942-9, "Loan Resolution (Security Agreement)." These resolutions supplement other provisions in this subpart. The applicant will agree:

(i) To indemnify the Government for any payments made or losses suffered by the Government on behalf of the association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.

(ii) To comply with applicable local, State and Federal laws, regulations, and ordinances.

(iii) To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, establishment of adequate reserves, and to continually operate and maintain the facility in good condition. Except for utility-type facilities, free service use may be permitted. If free services are extended no distinctions will be made in the extension of those services because of race, color, religion, sex, national origin, marital status, or physical or mental handicap.

(iv) To acquire and maintain such insurance coverage including fidelity bonds, as may be required by the Government.

(v) To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof in such a manner as may be required by the Government and to provide the Government without its request, a copy of each such audit and to make and forward to the Government such additional information and reports as it may, from time to time, require.

(vi) To provide the Government at all reasonable times, access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.

(vii) To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain FmHA or its successor agency under Public Law 103-354's concurrence prior to refusing new or adequate services to such persons. Upon failure of the applicant to provide services which are feasible and legal, such person shall have a direct right of action against the applicant organization.

(viii) To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds or notes or other debt instruments or other such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.

(ix) To refinance the unpaid balance, in whole or in part, of its debt upon the

request of the Government if at any time it should appear to the Government that the association is able to refinance its bonds by obtaining a loan for such purposes from responsible co-operative or private sources at reasonable rates and terms.

(x) To provide for, execute, and comply with Form FmHA or its successor agency under Public Law 103-354 400-4, "Assurance Agreement," and Form FmHA or its successor agency under Public Law 103-354 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which is to be incorporated in or attached as a rider to each construction contract and subcontract in excess of \$10,000.

(xi) To place the proceeds of the loan on deposit in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government as invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.

(xii) Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof or interest therein, and not to permit others to do so, without the prior written consent of the Government.

(xiii) Not to borrow any money from any source, enter into any contract or agreement, or incur any other liabilities in connection with making enlargements, improvements or extensions to, or for any other purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to repay the debt to FmHA or its successor agency under Public Law 103-354.

(xiv) That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government, at its option, may:

(A) Declare the entire principal amount then outstanding and accrued interest, due and payable;

(B) For the account of the association (payable from the source of funds pledged to pay the bonds or notes or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default; and/or

(C) Take possession of the facility, repair, maintain and operate, or otherwise dispose of the facility. Default under the provisions of the resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the association and default under any such instrument may be construed by the Government to constitute default hereunder.

(3) *Interim financing.* In all loans exceeding \$50,000, where funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be obtained so as to preclude the necessity for multiple advances of FmHA or its successor agency under Public Law 103-354 funds. Guide 1 or guide 1a, as appropriate, may be used to inform the private lender of FmHA or its successor agency under Public Law 103-354's commitment. When interim commercial financing is used, the application will be processed, including obtaining construction bids, to the stage where the FmHA or its successor agency under Public Law 103-354 loan would normally be closed, that is immediately prior to the start of construction. The FmHA or its successor agency under Public Law 103-354 loan should be closed as soon as possible after the disbursement of all interim funds. Interim financing may be for a fixed term provided the fixed term does not extend beyond the time projected for completion of construction. For this purpose, a fixed term is when the interim lender cannot be repaid prior to the end of the stipulated term of the interim instruments. When an FmHA or its successor agency under Public Law 103-354 Water and Waste Disposal grant is included, any interim financing involving a fixed term must be for the total FmHA or its

successor agency under Public Law 103-354 loan amount. Multiple advances may be used in conjunction with interim commercial financing when the applicant is unable to obtain sufficient funds through interim commercial financing in an amount equal to the loan. The FmHA or its successor agency under Public Law 103-354 loan proceeds (including advances) will be used to retire the interim commercial indebtedness. Before the FmHA or its successor agency under Public Law 103-354 loan is closed, the applicant will be required to provide FmHA or its successor agency under Public Law 103-354 with statements from the contractor, engineer, architect, and attorney that they have been paid to date in accordance with their contracts or other agreements and, in the case of the contractor, that any suppliers and subcontractors have been paid. If such statements cannot be obtained, the loan may be closed provided:

(i) Statements to the extent possible are obtained;

(ii) The interest of FmHA or its successor agency under Public Law 103-354 can be adequately protected and its security position is not impaired; and

(iii) Adequate provisions are made for handling the unpaid accounts by withholding or escrowing sufficient funds to pay such claims.

(4) *Obtaining closing instructions.* After loan approval, the completed docket will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(5) *Applicant contribution.* An applicant contributing funds toward the project cost shall deposit these funds in its construction account on or before loan closing or start of construction, whichever occurs first. Project costs paid prior to the required deposit time

with applicant funds shall be appropriately accounted for.

(6) *Evidence of and disbursement of other funds.* Applicants expecting funds from other sources for use in completing projects being partially financed with FmHA or its successor agency under Public Law 103-354 funds will present evidence of the commitment of these funds from such other sources. This evidence will be available before loan closing, or the start of construction, whichever occurs first. Ordinarily, the funds provided by the applicant or from other sources will be disbursed prior to the use of FmHA or its successor agency under Public Law 103-354 loan funds. If this is not possible, funds will be disbursed on a pro rata basis. FmHA or its successor agency under Public Law 103-354 funds will not be used to pre-finance funds committed to the project from other sources.

(o) *Loan closing*—(1) *Closing instructions.* Loans will be closed in accordance with the closing instructions issued by OGC.

(2) *Obtaining insurance and fidelity bonds.* Required property insurance policies, liability insurance policies, and fidelity bonds will be obtained by the time of loan closing or start of construction, whichever occurs first.

(3) *Distribution of recorded documents.* The originals of the recorded deeds, easements, permits, certificates of water rights, leases, or other contracts and similar documents which are not to be held by FmHA or its successor agency under Public Law 103-354 will be returned to the borrower. The original mortgage(s) and water stock certificates, if any, if not required by the recorder's office will be retained by FmHA or its successor agency under Public Law 103-354.

(4) *Review of loan closing.* In order to determine that the loan has been properly closed the loan docket will be reviewed by the State Director and OGC.

(p) *Project monitoring and fund delivery during construction*—(1) *Coordination of funding sources.* When a project is jointly financed, the State Director will reach any needed agreement or understanding with the representatives of the other source of funds on distribution of responsibilities for handling various aspects of the project. These

responsibilities will include supervision of construction, inspections and determinations of compliance with appropriate regulations concerning equal employment opportunities, wage rates, nondiscrimination in making services or benefits available, and environmental compliance. If any problems develop which cannot be resolved locally, complete information should be sent to the National Office for advice.

(2) *Multiple advances.* In the event interim commercial financing is not legally permissible or not available, multiple advances of FmHA or its successor agency under Public Law 103-354 loan funds are required. An exception to this requirement may be granted by the National Office when a single advance is necessitated by State law or public exigency. Multiple advances will be used only for loans in excess of \$50,000. Advances will be made only as needed to cover disbursements required by the borrower over a 30-day period. Advances should not exceed 24 in number nor extend longer than two years beyond loan closing. Normally, the retained percentage withheld from the contractor to assure construction completion will be included in the last advance.

(i) Section 1942.19 contains instructions for making multiple advances to public bodies.

(ii) Advances will be requested by the borrower in writing. The request should be in sufficient amounts to pay cost of construction, rights-of-way and land, legal, engineering, interest, and other expenses as needed. The applicant may use Form FmHA or its successor agency under Public Law 103-354 440-11, "Estimate of Funds Needed for 30 Day Period Commencing \_\_\_\_\_," to show the amount of funds needed during the 30-day period.

(iii) FmHA or its successor agency under Public Law 103-354 loan funds obligated for a specific purpose, such as the paying of interest, but not needed at the time of loan closing will remain in the Finance Office until needed unless State statutes require all funds to be delivered to the borrower at the time of closing. Loan funds may be advanced to prepay costs under paragraph (d)(1)(iv)(G) of this section. If all

funds must be delivered to the borrower at the time of closing to comply with State statutes, funds not needed at loan closing will be handled as follows:

(A) Deposited in an appropriate borrower account, such as the debt service account, or

(B) Deposited in a supervised bank account under paragraph (p)(3)(i) of this section.

(3) *Use and accountability of funds*—(i) *Supervised bank account.* FmHA or its successor agency under Public Law 103-354 loan funds and any funds furnished by the applicant/borrower to supplement the loan including contributions to purchase major items of equipment, machinery, and furnishings may be deposited in a supervised bank account if determined necessary as provided in subpart A of part 1902 of this chapter. When FmHA or its successor agency under Public Law 103-354 has a Memorandum of Understanding with another agency that provides for the use of supervised bank accounts, or when FmHA or its successor agency under Public Law 103-354 is the primary source of funds for a project and has determined that the use of a supervised bank account is necessary, project funds from other sources may also be deposited in the supervised bank account. FmHA or its successor agency under Public Law 103-354 shall not be accountable to the source of the other funds nor shall FmHA or its successor agency under Public Law 103-354 undertake responsibility to administer the funding program of the other entity. Supervised bank accounts should not be used for funds advanced by an interim lender.

(ii) *Other than supervised bank account.* If a supervised bank account is not used, arrangements will be agreed upon for the prior concurrence by FmHA or its successor agency under Public Law 103-354 of the bills or vouchers upon which warrants will be drawn, so that the payments from loan funds can be controlled and FmHA or its successor agency under Public Law 103-354 records kept current. If a supervised bank account is not used, use Form FmHA or its successor agency under Public Law 103-354 402-2, "Statement of Deposits and Withdrawals," or similar form to monitor funds. Peri-

odic reviews of nonsupervised accounts shall be made by FmHA or its successor agency under Public Law 103-354 at the times and in the manner as FmHA or its successor agency under Public Law 103-354 prescribes in the conditions of loan approval. State laws regulating the depositories to be used shall be complied with.

(iii) *Use of minority owned banks.* Applicants are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members) for the deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, DC 20230 and is also available in all FmHA or its successor agency under Public Law 103-354 offices.

(4) *Development inspections.* The District Director will be responsible for monitoring the construction of all projects being financed, wholly or in part, with FmHA or its successor agency under Public Law 103-354 funds. Technical assistance will be provided by the State Director's staff. Project monitoring will include construction inspections and a review of each project inspection report, each change order and each partial payment estimate and other invoices such as payment for engineering/architectural and legal fees and other materials determined necessary to effectively monitor each project. These activities will not be performed on behalf of the applicant/borrower, but are solely for the benefit of FmHA or its successor agency under Public Law 103-354 and in no way are intended to relieve the applicant/borrower of corresponding obligations to conduct similar monitoring and inspection activities. Project monitoring will include periodic inspections to review partial payment estimates prior to their approval and to review project development in accordance with plans and specifications. Each inspection will be recorded using Form FmHA or its successor agency under Public Law 103-354 1924-12, "Inspection Report." The original Form FmHA or its successor agency under Public Law 103-354 1924-12 will be filed in the project case folder and a copy furnished to the State Director. The

State Director will review inspection reports and will determine that the project is being effectively monitored. The District Director is authorized to review and accept partial payment estimates prepared by the contractor and approved by the borrower, provided the consulting engineer or architect, if one is being utilized for the project, has approved the estimate and certified that all material purchased or work performed is in accordance with the plans and specifications, or if a consulting engineer or architect is not being utilized, the District Director has determined that the funds requested are for authorized purposes. If there is any indication that construction is not being completed in accordance with the plans and specifications or that any other problems exist, the District Director should notify the State Director immediately and withhold all payments on the contract.

(5) *Payment for construction.* Each payment for project costs must be approved by the borrower's governing body. Payment for construction must be for amounts shown on payment estimate forms. Form FmHA or its successor agency under Public Law 103-354 1924-18, "Partial Payment Estimate," may be used for this purpose or other similar forms may be used with the prior approval of the State Director or designee. However, the State Director or designee cannot require a greater reporting burden than is required by Form FmHA or its successor agency under Public Law 103-354 1924-18. Advances for contract retainage will not be made until such retainage is due and payable under the terms of the contract. The review and acceptance of project costs, including construction partial payment estimates by FmHA or its successor agency under Public Law 103-354, does not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts.

(6) *Use of remaining funds.* Funds remaining after all costs incident to the basic project have been paid or provided for will not include applicant contributions. Applicant contributions will be considered as funds initially expended for the project. Funds remain-

ing, with exception of applicant contributions, may be considered in direct proportion to the amount obtained from each source. Remaining funds will be handled as follows:

(i) *Agency loan and/or grant funds.* Remaining funds may be used for purposes authorized by paragraph (d) of this section, provided the use will not result in major changes to the facility design or project and that the purposes of the loan and/or grant remains the same.

(A) On projects that only involve an FmHA or its successor agency under Public Law 103-354 loan and no FmHA or its successor agency under Public Law 103-354 grant, funds that are not needed will be applied as an extra payment on the FmHA or its successor agency under Public Law 103-354 indebtedness unless other disposition is required by the bond ordinance, resolution, or State statute.

(B) On projects that involve an FmHA or its successor agency under Public Law 103-354 grant, all remaining FmHA or its successor agency under Public Law 103-354 funds will be considered to be grant funds up to the full amount of the grant. Grant funds not expended under paragraph (p)(6)(i) of this section will be deobligated.

(ii) *Funds from other sources.* Funds remaining from other sources will be handled according to rules, regulations and/or the agreement governing their participation in the project.

(q) *Borrower accounting methods, management reporting and audits—(1) Accounting methods and records—(i) Method of accounting and financial statements.* Financial statements must be prepared on the accrual basis of accounting unless State statutes or regulatory agencies provide otherwise, or an exception is made by FmHA or its successor agency under Public Law 103-354. This requirement is for accrual basis financial statements and not for accrual basis accounting systems. Organizations may keep their books on an accounting basis other than accrual and then make adjustments so that the financial statements are presented on the accrual basis.

(ii) *Approval requirement.* Before loan closing or start of construction, whichever is first, each borrower shall provide to, and obtain approval from the FmHA or its successor agency under Public Law 103-354 loan approval official for its accounting and financial reporting system, including the agreement with its auditor, if an auditor is required.

(iii) *Record retention.* Each borrower shall retain all records, books, and supporting material for 3 years after the issuance of the audit reports and financial statements. Upon request, this material will be made available to FmHA or its successor agency under Public Law 103-354, the Comptroller General, or to their representatives.

(2) *Management reports.* These reports will furnish the management with a means of evaluating prior decisions and serve as a basis for planning future operations and financial conditions. In those cases where revenues from multiple sources are pledged as security for an FmHA or its successor agency under Public Law 103-354 loan, two reports will be required; one for the project being financed by FmHA or its successor agency under Public Law 103-354 and one combining the entire operation of the borrower. In those cases where FmHA or its successor agency under Public Law 103-354 loans are secured by general obligation bonds or assessments and the borrower combines revenues from all sources, one management report combining all such revenues will suffice. The following management data will be submitted by the borrower to the FmHA or its successor agency under Public Law 103-354 District Director.

(i) *Financial information.* (A) Form FmHA or its successor agency under Public Law 103-354 442-2, "Statement of Budget, Income and Equity," which includes Schedule 1, "Statement of Budget, Income and Equity" and Schedule 2, "Projected Cash Flow."

(B) Prior to the beginning of each fiscal year, two copies, with data entered in column three only of Schedule 1, page one, "Annual Budget" and all of Schedule 2, will be submitted to the District Director. Twenty (20) days after the end of each of the first three quarters of each year, two copies with

all information furnished on Schedule 1 will be submitted. For the fourth quarter of each year, submit together with the year-end financial requirements of paragraphs (q) (4) and (5) of this section. More frequent submissions may be required by FmHA or its successor agency under Public Law 103-354 when necessary. The submission dates to the District Director will be 90 days following year-end for audited statements and 60 days following year-end for unaudited statements. The fourth quarter submission may serve the dual purpose of management report and year-end financial requirement for Statement of Income.

(ii) *Additional information.* (A) A list of the names and addresses of all members of the governing body as appropriate, also indicating the officers and their terms of office, will be included with the other information required at the end of the year.

(B) Borrowers delinquent on payment to FmHA or its successor agency under Public Law 103-354 or experiencing financial problems, will develop a positive action plan to resolve financial problems. The plan will be reviewed with FmHA or its successor agency under Public Law 103-354 and updated at least quarterly. Guide 22 may be used for developing a positive action plan.

(3) *Substitute for management reports.* When FmHA or its successor agency under Public Law 103-354 loans are secured by the general obligation of the public body or tax assessments which total 100 percent of the debt service requirements, the State Director may authorize an annual audit to substitute for other management reports if the audit is received within 90 days following the period covered by the audit.

(4) *Audits.* All audits are to be performed in accordance with generally accepted government auditing standards (GAGAS), using the publication, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions," developed by the Comptroller General of the United States in 1981, and any subsequent revisions. In addition, the audits are also to be performed in accordance with various Office of Management and Budget (OMB) Circulars and FmHA or

its successor agency under Public Law 103–354 requirements as specified in the separate sections of this subpart.

(i) *Audits based upon Federal financial assistance received.* The following requirements shall apply to audits of the years in which funds are received by the borrower.

(A) *Local governments and Indian tribes.* These organizations are to be audited in accordance with this subpart and OMB Circular A–128, with copies of the audits being forwarded by the borrower to the FmHA or its successor agency under Public Law 103–354 District Director and the appropriate Federal cognizant agency. The Circular is available in any FmHA or its successor agency under Public Law 103–354 office. For years in which an audit is not required by OMB Circular A–128, see paragraph (q)(4)(ii) of this section.

(1) *Cognizant agency.* (i) “Cognizant agency” means the Federal agency assigned by OMB to carry out the responsibilities described in OMB Circular A–128. Within the Department of Agriculture (USDA), OIG is designated as the cognizant agency.

(ii) *Cognizant agency assignments.* Smaller borrowers not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that FmHA or its successor agency under Public Law 103–354 provided the major portion of Federal financial assistance, the appropriate USDA OIG Regional Inspector General shall be contacted. FmHA or its successor agency under Public Law 103–354 and the borrower shall coordinate all proposed audit plans with appropriate USDA OIG. A list of OIG contact persons is attached to FmHA Instruction 1942–A as exhibit B (available in any FmHA or its successor agency under Public Law 103–354 office).

(2) *Audit requirements.* It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits.

(i) Local governments and Indian tribes that receive \$100,000 or more a

year in Federal financial assistance shall have an audit for that year in accordance with OMB Circular A–128.

(ii) Local governments and Indian tribes that receive between \$25,000 and \$100,000 a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–128 or in accordance with FmHA or its successor agency under Public Law 103–354 audit requirements. This is an option of the local government or Indian tribe. If the election is made to have an audit performed in accordance with FmHA or its successor agency under Public Law 103–354 requirements, the audit shall be in accordance with paragraph (q)(4)(i)(B) of this section.

(iii) Local governments and Indian tribes that receive less than \$25,000 a year in Federal financial assistance shall be exempt from both OMB Circular A–128 audits and FmHA or its successor agency under Public Law 103–354 audit requirements, except for those based upon annual gross income which may apply in paragraph (q)(4)(ii) of this section. However, any audits performed shall be governed by the requirements prescribed by State or local law or regulation.

(iv) Public hospitals and public colleges and universities may be excluded from OMB Circular A–128 audit requirements. However, in this case audits shall be made in accordance with paragraph (q)(4)(i)(B) of this section.

(3) *Fraud, abuse, and illegal acts.* If the auditor becomes aware of any indication of fraud, abuse, or illegal acts in FmHA or its successor agency under Public Law 103–354 financed projects, prompt written notice shall be given to the appropriate USDA OIG Regional Inspector General and the District Director.

(B) *Nonprofit organizations and others.* These organizations are to be audited in accordance with FmHA or its successor agency under Public Law 103–354 requirements and OMB Circular A–110, “Uniform Requirements for Grants to Universities, Hospitals, and Other Nonprofit Organizations.” These requirements also apply to public hospitals and public colleges and universities if they are excluded from the audits of paragraph (q)(4)(i)(A) of this section.

(1) Audits shall be annual unless otherwise prohibited and supplied to the FmHA or its successor agency under Public Law 103-354 District Director as soon as possible but in no case later than 150 days following the period covered by the audit.

(2) *Audit requirements.* (i) Borrowers which receive \$25,000 or more a year in Federal financial assistance shall have an audit. Also, refer to paragraph (q)(4)(ii) of this section for additional audit requirements.

(ii) Borrowers which receive less than \$25,000 a year in Federal financial assistance shall be exempt from audits except for the audits based upon annual gross income which may apply in paragraph (q)(4)(ii) of this section.

(iii) Indications of fraud, abuse and illegal acts shall be processed in accordance with paragraph (q)(4)(i)(A)(3) of this section.

(ii) *Audits based upon annual gross income.* The following annual gross income audit requirements shall apply to all borrowers (local government, Indian tribes, and nonprofit organizations) for all years except the ones in which there is an audit requirement based upon the amount of Federal assistance received as required by paragraphs (q)(4)(i)(A) and (q)(4)(i)(B) of this section. Audits shall be on an annual basis unless otherwise prohibited and shall be supplied to FmHA or its successor agency under Public Law 103-354 as soon as possible but in no case later than 150 days following the period covered by the audit.

(A) *Gross annual income of \$500,000 or more and an unpaid loan balance exceeding \$100,000.* (1) Local governments and Indian tribes shall have audits made in accordance with State or local law or regulation or regulatory agency requirements. If no such requirements exist, audits shall be made in accordance with OMB Circular A-110 and paragraphs (q)(4)(i)(B)(1) and (2)(iii) of this section.

(2) All other organizations shall have audits in accordance with OMB Circular A-110 and paragraph (q)(4)(i)(B)(1) and (2)(iii) of this section.

(B) *Gross annual income of less than \$500,000.* For borrowers that have a gross annual income of less than \$500,000, the requirements for audits

shall be at the discretion of the State Director. However, when audits are required, they shall be in accordance with paragraph (q)(4)(ii)(A) of this section.

(5) *Borrowers exempt from audits.* All borrowers who are exempt from audits, will, within 60 days following the end of each fiscal year, furnish the FmHA or its successor agency under Public Law 103-354 with annual financial statements, consisting of a verification of the organization's balance sheet and statement of income and expense by an appropriate official of the organization. Forms FmHA 442-2 and 442-3 may be used. For borrowers using Form FmHA or its successor agency under Public Law 103-354 442-2, the dual purpose of fourth quarter management reports, when required, and annual statements of income will be met with this one submission.

(r) *FmHA or its successor agency under Public Law 103-354 actions for borrower supervision and servicing—(1) Management assistance and management reports.* Management assistance will be based on such factors as observation of borrower operations and review of the periodic financial reports. The amount and type of assistance provided will be that needed to assure borrower success and compliance with its agreements with FmHA or its successor agency under Public Law 103-354.

(i) *The District Director* is responsible for obtaining all management report data from the borrower, promptly reviewing it and making any necessary recommendations to the borrower within 40 calendar days. However, after receiving management reports for borrowers whose FmHA or its successor agency under Public Law 103-354 indebtedness exceeds \$1,000,000 and for delinquent and problem case borrowers, the District Director will forward them with comments to the State Director for review.

(ii) *District Director reviews of borrower operations.* (A) A review of the borrower's total operational and management practices, including records and accounts to be maintained, will be made between the beginning of the ninth and the end of the eleventh full month of the first year of operation. A

report will be made to the State Director by sending a copy of Form FmHA or its successor agency under Public Law 103-354 442-4, "District Director Report." Earlier reviews will be made when needed to resolve operational and management problems that may arise.

(B) Subsequent reviews will be made for all delinquent and other borrowers having financial problems and reported to the State Director by a copy of Form FmHA or its successor agency under Public Law 103-354 442-4. These borrowers will adopt a positive action plan (see guide 22). The plan will be reviewed quarterly by the District Director until the delinquency is eliminated or other servicing actions are recommended.

(C) The District Director may, after the end of the borrower's third fiscal year of operation, exempt it from submitting management reports provided it:

- (1) Is current on its loan payments.
- (2) Is meeting the conditions of its agreements with FmHA or its successor agency under Public Law 103-354.
- (3) Has demonstrated its ability to successfully operate and manage the organization and has not obtained subsequent loans in the last 3 years which have significantly altered the scope of the project.
- (4) Has the State Director's written concurrence for all borrowers whose FmHA or its successor agency under Public Law 103-354 indebtedness exceeds \$1,000,000.

(D) Borrowers qualifying for this exemption will still be required to submit a copy of their audits or annual financial statements.

(E) Ordinarily and exception will not be made to the requirement for the borrower to submit a copy of its annual budget.

(F) The District Director or State Director may reinstate the requirements for submission of periodic management reports for those borrowers who became delinquent or otherwise are not carrying out their agreements with FmHA or its successor agency under Public Law 103-354 or require more frequent submission of management reports. This requirement will be reinstated for borrowers receiving a subse-

quent loan which will significantly alter the scope of the project.

(G) The District Director may accept management reports which are not prepared on page 1 of Form FmHA or its successor agency under Public Law 103-354 442-2 Schedule 1 but contain like information. However, page 2 of this form must be used by all borrowers required to furnish management reports.

(iii) *The State Director* is responsible for:

(A) The review of the District Director's submission for all borrowers whose indebtedness exceeds \$1,000,000. The State Director will forward comments to the District Director in order that a response, if necessary, can be sent to the borrower within 40 calendar days after the borrower's submission of its management reports.

(B) The review of all delinquent and problem case borrower management reports. Ordinarily, review findings and instructions regarding further management assistance will be determined, and provided to the District Office within 20 calendar days of submission for delinquent and problem borrowers.

(C) Forwarding to the National Office copies of review findings, instructions for further assistance, and positive action plans on delinquent borrowers and borrowers experiencing financial problems, at same time the findings and instructions are provided to the District Office.

(2) *Audits and financial statements*—(i) *The District Director* is responsible for obtaining all audit reports and financial statements from the borrower. Those received from borrowers whose FmHA or its successor agency under Public Law 103-354 indebtedness exceeds \$1,000,000 and from delinquent and problem case borrowers will be promptly reviewed and forwarded to the State Director with appropriate comments.

(ii) *The District Director* is responsible for the review of audits and financial statements and for recommendations and instructions for borrower assistance. For borrowers required to have audits, in accordance with paragraph (q)(4)(i)(A) of this section, the District Director is also responsible for any necessary follow up required because of

audit resolution items received from the cognizant agencies.

(iii) *The State Director* is responsible for the review of audits of borrowers whose indebtedness exceeds \$1,000,000 and delinquent and problem case borrowers. The State Director may recommend to the District Director any necessary actions to be taken.

(3) *Security inspections.* A representative of the borrower will ordinarily accompany the District Director during each inspection.

(i) *Post construction inspection.* The District Director will inspect each facility between the beginning of the ninth and the end of the eleventh full month of the first year of operation. This will normally coincide with the District Director's review of the borrower's total operational and management practices described in paragraph (r)(1)(ii)(A) of this section. The results of this inspection will be reported to the State Director on Form FmHA or its successor agency under Public Law 103-354 1924-12. Earlier inspections will be made when operational or other problems indicate a need. The State Director will provide guidance to the District Director to assure that action will be taken to correct project deficiencies.

(ii) *Subsequent inspections.* The District Director will make subsequent inspections of borrower security property and facilities during each third year after the post construction inspection. The results of this inspection will be reported to the State Director on Form FmHA or its successor agency under Public Law 103-354 1924-12.

(iii) *Special inspections.* The District Director may request, or the State Director may determine, the need for a member of the State staff to make certain security inspections. In such cases, the State Director will detail a staff member to make such inspections.

(iv) *Follow-up inspections.* If any inspection discloses deficiencies or exceptions, or otherwise indicates a need for subsequent inspections prior to the third year, the State Director will prescribe the type and frequency of follow-up inspections. These inspections will be made until all deficiencies and exceptions have been corrected.

(4) *Civil rights compliance reviews* will be performed under subpart E of part 1901 of this chapter for the life of the loan.

(5) Other loan servicing actions will be in accordance with subparts E and O of part 1951 of this chapter.

[50 FR 7296, Feb. 22, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1942.17, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

#### **§ 1942.18 Community facilities—Planning, bidding, contracting, constructing.**

(a) *General.* This section is specifically designed for use by owners including the professional or technical consultants and/or agents who provide assistance and services such as architectural, engineering, inspection, financial, legal or other services related to planning, bidding, contracting, and constructing community facilities. These procedures do not relieve the owner of the contractual obligations that arise from the procurement of these services. For this section, an owner is defined as an applicant, borrower, or grantee.

(b) *Technical services.* Owners are responsible for providing the engineering or architectural services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services may be provided by the owner's "in house" engineer or architect or through contract, subject to FmHA or its successor agency under Public Law 103-354 concurrence. Architects and engineers must be licensed in the State where the facility is to be constructed.

(c) *Preliminary reports.* Preliminary architectural and engineering reports must conform with customary professional standards. Preliminary report guidelines for water, sanitary sewer, solid waste, storm sewer, and other essential community facilities are available from FmHA or its successor agency under Public Law 103-354.

(d) *Design policies.* Facilities financed by FmHA or its successor agency under Public Law 103-354 will be designed and constructed in accordance with sound

engineering and architectural practices, and must meet the requirements of Federal, State and local agencies.

(1) *Natural resources.* Facility planning should be responsive to the owner's needs and should consider the long-term economic, social and environmental needs as set forth in this section. FmHA or its successor agency under Public Law 103–354's environmental considerations are under subpart G of part 1940 of this chapter.

(i) *Floodplains and wetlands.* Facilities must avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and wetlands, and avoid direct or indirect support of floodplain and wetland development whenever there is a practicable alternative. This subject is more fully discussed in Executive Order 11988, Executive Order 11990, and Water Resources Council's Floodplain Management Guidelines (43 FR 6030) which is available in all FmHA or its successor agency under Public Law 103–354 offices. Facilities located in special flood and mudslide prone areas must comply with FmHA or its successor agency under Public Law 103–354's eligibility and insurance requirements in subpart B of part 1806 of this chapter (FmHA Instruction 426.2).

(ii) *Coastal zone management.* Facilities shall be designed and constructed in a manner consistent with approved State management programs, under the Coastal Zone Management Act of 1972 (Pub. L. 92–583 section 307 (c)(1) and (2)) as supplemented by the Department of Commerce regulations 15 CFR part 930.

(iii) *Wild and scenic rivers.* Facilities shall be designed and constructed in order that designated wild and scenic rivers be preserved in free-flowing condition and that they and their immediate environments be protected for the benefit and enjoyment of present and future generations under the Wild and Scenic Rivers Act of 1978 (Pub. L. 95–625).

(iv) *Endangered species.* Facilities shall be designed and constructed in a manner to conserve, to the extent practicable, the various endangered and threatened species of fish or wildlife and plants, and will not jeopardize

their continued existence and will not result in destruction or modification of the habitat of species in the Endangered Species Act of 1973 (Pub. L. 93–205).

(2) *Historic preservation.* Facilities should be designed and constructed in a manner which will contribute to the preservation and enhancement of sites, structures, and objects of historical, architectural, and archaeological significance. All facilities must comply with the National Historic Preservation Act of 1966 (16 U.S.C 470) as supplemented by 36 CFR part 800 and Executive Order 11593, "Protection and Enhancement of the Cultural Environment," subpart F of part 1901 of this chapter sets forth procedures for the protection of Historic and Archaeological Properties.

(3) *Architectural barriers.* All facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with the Architectural Barriers Act of 1968 (Pub. L. 90–480) as implemented by the General Services Administration regulations 41 CFR 101–19.6 and section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112) as implemented by 7 CFR parts 15 and 15b.

(4) *Health care facilities.* The proposed facility must meet the minimum standards for design and construction contained in the American Institute of Architects Press Publication No. ISBN 0–913962–96–1, "Guidelines for Construction and Equipment of Hospital and Medical Facilities," 1987 Edition. The facility must also meet the life/safety aspects of the 1985 edition of the National Fire Protection Association (NFPA) 101 Life Safety Code, or any subsequent code that may be designated by the Secretary of HHS. All publications referenced in this section are available in all FmHA or its successor agency under Public Law 103–354 State Offices. Under §1942.17(j)(8)(ii) of this subpart, a statement by the responsible regulatory agency that the facility meets the above standards will be required. Any exceptions must have prior National Office concurrence.

(5) *Energy conservation.* Facility design should consider cost effective energy saving measures or devices.

(6) *Lead base paints.* Lead base paints shall not be used in facilities designed for human habitation. Owners must comply with the Lead Base Paints Poisoning and Prevention Act of 1971 (42 U.S.C. 4801) and the National Consumer Health Information and Health Promotion Act of 1976 (Pub. L. 94-317) with reference to paint specifications used according to exhibit H of subpart A of part 1924 of this chapter.

(7) *Fire protection.* Water facilities must have sufficient capacity to provide reasonable fire protection to the extent practicable.

(8) *Growth capacity.* Facilities must have sufficient capacity to provide for reasonable growth to the extent practicable.

(9) *Water conservation.* Owners are encouraged, when economically feasible, to incorporate water conservation practices into a facility's design. For existing water systems, evidence must be provided showing that the distribution system water losses do not exceed reasonable levels.

(10) *Water quality.* All water facilities must meet the requirements of the Safe Drinking Water Act (Pub. L. 93-523) and provide water of a quality that meets the current Interim Primary Drinking Water Regulations (40 CFR part 141).

(11) *Combined sewers.* New combined sanitary and storm water sewer facilities will not be financed by FmHA or its successor agency under Public Law 103-354. Extensions to existing combined systems can only be financed when separate systems are impractical.

(12) *Compliance.* All facilities must meet the requirements of Federal, State, and local agencies having the appropriate jurisdiction.

(13) *Dam safety.* Projects involving any artificial barrier which impounds or diverts water, or the rehabilitation or improvement of such a barrier, should comply with the provisions for dam safety as discussed in the Federal Guidelines for Dam Safety (Government Printing Office stock No. 041-001-00187-5) as prepared by the Federal Coordinating Council for Science, Engineering and Technology.

(14) *Pipe.* All pipe used shall meet current American Society for Testing

Materials (ASTM) or American Water Works Association (AWWA) standards.

(15) *Water system testing.* For new water systems or extensions to existing water systems, leakage shall not exceed 10 gallons per inch of pipe diameter per mile of pipe per 24 hours when tested at 1½ times the working pressure or rated pressure of the pipe, whichever is greater.

(16) *Metering devices.* Water facilities financed by FmHA or its successor agency under Public Law 103-354 will have metering devices for each connection. An exception to this requirement may be granted by the FmHA or its successor agency under Public Law 103-354 State Director when the owner demonstrates that installation of metering devices would be a significant economic detriment and that environmental consideration would not be adversely affected by not installing such devices.

(17) *Seismic safety.* (i) All new building construction shall be designed and constructed in accordance with the seismic provisions of one of the following model building codes or the latest edition of that code providing an equivalent level of safety to that contained in latest edition of the National Earthquake Hazard Reduction Program's (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions):

(A) 1991 International Conference of Building Officials (ICBO) Uniform Building Code;

(B) 1993 Building Officials and Code Administrators International, Inc. (BOCA) National Building Code; or

(C) 1992 Amendments to the Southern Building Code Congress International (SBCCI) Standard Building Code.

(ii) The date, signature, and seal of a registered architect or engineer and the identification and date of the model building code on the plans and specifications will be evidence of compliance with the seismic requirements of the appropriate building code.

(e) *Construction contracts.* Contract documents must be sufficiently descriptive and legally binding in order to accomplish the work as economically and expeditiously as possible.

(1) *Standard construction contract documents* are available from FmHA or its successor agency under Public Law 103-354. When FmHA or its successor agency under Public Law 103-354's standard construction contract documents are used, it will normally not be necessary for the Office of the General Counsel (OGC) to perform a detailed legal review. If the construction contract documents utilized are not in the format of guide forms previously approved by FmHA or its successor agency under Public Law 103-354, OGC's review of the construction contract documents will be obtained prior to their use.

(2) *Contract review and approval.* The owner's attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are adequate, and that the persons executing these documents have been properly authorized to do so. The contract documents, bids bonds, and bid tabulation sheets will be forwarded to FmHA or its successor agency under Public Law 103-354 for approval prior to awarding. All contracts will contain a provision that they are not in full force and effect until they have been approved by FmHA or its successor agency under Public Law 103-354. The FmHA or its successor agency under Public Law 103-354 State Director or designee is responsible for approving construction contracts with the legal advice and guidance of the OGC when necessary.

(3) *Separate contracts.* Arrangements which split responsibility of contractors (separate contracts for labor and material, extensive subcontracting and multiplicity of small contracts on the same job), should be avoided whenever it is practical to do so. Contracts may be awarded to suppliers or manufacturers for furnishing and installing certain items which have been designed by the manufacturer and delivered to the job site in a finished or semifinished state such as prefabricated buildings and lift stations. Contracts may also be awarded for material delivered to the job site and installed by a patented process or method.

(f) *Utility purchase contracts.* Applicants proposing to purchase water or other utility service from private or public sources shall have written con-

tracts for supply or service which are reviewed and approved by the FmHA or its successor agency under Public Law 103-354 State Director or designee. To the extent practical, FmHA or its successor agency under Public Law 103-354 review and approval of such contracts should take place prior to their execution by the owner. Form FmHA or its successor agency under Public Law 103-354 442-30, "Water Purchase Contract," may be used when appropriate. If the FmHA or its successor agency under Public Law 103-354 loan will be repaid from system revenues, the contract will be pledged to FmHA or its successor agency under Public Law 103-354 as part of the security for the loan. Such contracts will:

(1) Include a commitment by the supplier to furnish, at a specified point, an adequate quantity of water or other service and provide that, in case of shortages, all of the supplier's users will proportionately share shortages. If it is impossible to obtain a firm commitment for either an adequate quantity or sharing shortages proportionately, a contract may be executed and approved provided adequate evidence is furnished to enable FmHA or its successor agency under Public Law 103-354 to make a determination that the supplier has adequate supply and/or treatment facilities to furnish its other users and the applicant for the foreseeable future; and

(i) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(ii) A suitable alternative supply could be arranged within the repayment ability of the borrower if it should become necessary; or

(iii) Prior approval is obtained from the National Office. The following information should be submitted to the National Office:

(A) Transmittal memorandum including:

(1) Alternative supplies considered; and

(2) Recommendations and comments; and

(3) Any other necessary supporting information.

(B) Copies of the following:

(1) Proposed letter of conditions; and  
(2) Form FmHA or its successor agency under Public Law 103-354 442-7, "Operating Budget"; and

(3) Form FmHA or its successor agency under Public Law 103-354 442-3, "Balance Sheet"; and

(4) Preliminary Engineering Report; and

(5) Proposed Contract.

(C) Owner and FmHA or its successor agency under Public Law 103-354 engineer's comments and recommendations.

(D) Documentation and statement from the supplier that it has an adequate supply and treatment facilities available to meet the needs of its users and the owner for the foreseeable future.

(2) Set out the ownership and maintenance responsibilities of the respective parties including the master meter if a meter is installed at the point of delivery.

(3) Specify the initial rates and provide some kind of escalator clause which will permit rates for the association to be raised or lowered proportionately as certain specified rates for the supplier's regular customers are raised or lowered. Provisions may be made for altering rates in accordance with the decisions of the appropriate State agency which may have regulatory authority.

(4) Run for a period of time which is at least equal to the repayment period of the loan. State Directors may approve contracts for shorter periods of time if the supplier cannot legally contract for such period, or if the owner and supplier find it impossible or impractical to negotiate a contract for the maximum period permissible under State law, provided:

(i) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(ii) The contract contains adequate provisions for renewal; or

(iii) A determination is made that in the event the contract is terminated, there are or will be other adequate

sources available to the owner that can feasibly be developed or purchased.

(5) Set out in detail the amount of connection or demand charges, if any, to be made by the supplier as a condition to making the service available to the owner. However, the payment of such charges from loan funds shall not be approved unless FmHA or its successor agency under Public Law 103-354 determines that it is more feasible and economical for the owner to pay such a connection charge than it is for the owner to provide the necessary supply by other means.

(6) Provide for a pledge of the contract to FmHA or its successor agency under Public Law 103-354 as part of the security for the loan.

(7) Not contain provisions for:

(i) Construction of facilities which will be owned by the supplier. This does not preclude the use of money paid as a connection charge for construction to be done by the supplier.

(ii) Options for the future sale or transfer. This does not preclude an agreement recognizing that the supplier and owner may at some future date agree to a sale of all or a portion of the facility.

(g) *Sewage treatment and bulk water sales contracts.* Owners entering into agreements with private or public parties to treat sewage or supply bulk water shall have written contracts for such service and all such contracts shall be subject to FmHA or its successor agency under Public Law 103-354 concurrence. Paragraph (f) of this section should be used as a guide to prepare such contracts.

(h) *Performing construction.* Owners are encouraged to accomplish construction through contracts with recognized contractors. Owners may accomplish construction by using their own personnel and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer or architect prepares design drawings and specifications and inspects construction and furnishes inspection reports as required by paragraph (o) of this section. For other than utility-type facilities, inspection services may be provided by individuals as approved by the FmHA or its successor agency

under Public Law 103-354 State Director. In either case, the requirements of paragraph (j) of this section apply. Payments for construction will be handled under § 1942.17(p)(5) of this part.

(i) *Owner's contractual responsibility.* This subpart does not relieve the owner of any contractual responsibilities under its contract. The owner is responsible for the settlement of all contractual and administrative issues arising out of procurements entered into in support of a loan or grant. These include, but are not limited to: source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the local, State, or Federal authority as may have jurisdiction.

(j) *Owner's procurement regulations.* Owner's procurement regulations must comply with the following standards:

(1) *Code of conduct.* Owners shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by FmHA or its successor agency under Public Law 103-354 funds. No employee, officer or agent of the owner shall participate in the selection, award, or administration of a contract supported by FmHA or its successor agency under Public Law 103-354 funds if a conflict of interest, real or apparent, would be involved. Examples of such conflicts would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above; has a financial or other interest in the firm selected for the award.

(i) The owner's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of subagreements.

(ii) To the extent permitted by State or local law or regulations, the owner's standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the owner's officers, employees, agents, or by contractors or their agents.

(2) *Maximum open and free competition.* All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what are considered to be restrictive of competition include, but are not limited to: Placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience and bonding requirements. In specifying material(s), the owner and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. For a water or waste disposal facility, FmHA or its successor agency under Public Law 103-354 shall consider fully any recommendation made by the loan applicant or borrower concerning the technical design and choice of materials to be used for such a facility. If FmHA or its successor agency under Public Law 103-354 determines that a design or material, other than those that were recommended should be considered by including them in the procurement process as an acceptable design or material in the water or waste disposal facility, FmHA or its successor agency under Public Law 103-354 shall provide such applicant or borrower with a comprehensive justification for such a determination. The justification will be documented in writing.

(3) *Owner's review.* Proposed procurement actions shall be reviewed by the owner's officials to avoid the purchase of unnecessary or duplicate items. Consideration should be given to consolidation or separation of procurement items to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, owners are encouraged to enter into State and local intergovernmental

agreements for procurement or use of common goods and services.

(4) *Solicitation of offers*, whether by competitive sealed bids or competitive negotiation, shall:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used to define the performance or other salient requirements of a procurement. The specific features of the named brands which must be met by offerors shall be clearly stated.

(ii) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(5) *Small, minority, and women's businesses and labor surplus area firms*. (i) affirmative steps should be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

(A) Include qualified small and minority businesses on solicitation lists.

(B) Assure that small and minority businesses are solicited whenever they are potential sources.

(C) When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(D) Where the requirement permits, establish delivery schedules which will encourage participation by small and minority businesses.

(E) Use the services and assistance of the Small Business Administration and

the Office of Minority Business Enterprise of the Department of Commerce.

(F) If any subcontracts are to be let, require the prime contractor to take the affirmative steps in paragraphs (j)(5)(i) (A) through (E) of this section.

(ii) Owners shall take similar appropriate affirmative action in support of women's businesses.

(iii) Owners are encouraged to procure goods and services from labor surplus areas.

(iv) Owners shall submit a written statement or other evidence to FmHA or its successor agency under Public Law 103-354 of the steps taken to comply with paragraphs (j)(5)(i) (A) through (F), (j)(5)(ii), and (j)(5)(iii) of this section.

(6) *Contract pricing*. Cost plus a percentage of cost method of contracting shall not be used.

(7) *Unacceptable bidders*. The following will not be allowed to bid on, or negotiate for, a contract or subcontract related to the construction of the project:

(i) An engineer or architect as an individual or firm who has prepared plans and specifications or who will be responsible for monitoring the construction;

(ii) Any firm or corporation in which the owner's architect or engineer is an officer, employee, or holds or controls a substantial interest;

(iii) The governing body's officers, employees, or agents;

(iv) Any member of the immediate family or partners in paragraphs (j)(7)(i), (j)(7)(ii), or (j)(7)(iii) of this section; or

(v) An organization which employs, or is about to employ, any person in paragraph (j)(7)(i), (j)(7)(ii), (j)(7)(iii) or (j)(7)(iv) of this section.

(8) *Contract award*. Contracts shall be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall include but not be limited to matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts shall not be made with parties who are suspended or debarred.

(k) *Procurement methods.* Procurement shall be made by one of the following methods: small purchase procedures; competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) is the preferred procurement method for construction contracts.

(1) *Small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than \$10,000. If small purchase procedures are used for a procurement, written price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) *Competitive sealed bids.* In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method the following shall apply:

(i) At a sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of qualified sources. In addition, the invitation shall be publicly advertised.

(ii) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation under paragraph (j)(4) of this section.

(iii) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(iv) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs shall be considered in determining which bid is lowest.

(v) Any or all bids may be rejected by the owner when it is in their best interest.

(3) *Competitive negotiation.* In competitive negotiations, proposals are re-

quested from a number of sources and the Request for Proposal is publicized. Negotiations are normally conducted with more than one of the sources submitting offers. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching agreement on the technical quality, price, other terms of the proposed contract and specifications may be necessary. If competitive negotiation is used for a procurement, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required, and their relative importance.

(iii) The owner shall provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the owner, price and other factors considered. Unsuccessful offerors should be promptly notified.

(v) Owners may utilize competitive negotiation procedures for procurement of architectural/engineering and other professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiations of fair and reasonable compensation.

(4) *Noncompetitive negotiation.* Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is not feasible under small purchase, competitive sealed bids (formal advertising) or

competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

- (i) The item is available only from a single source; or
- (ii) There exists a public exigency or emergency and the urgency for the requirement will not permit a delay incident to competitive solicitation; or
- (iii) After solicitation of a number of sources, competition is determined inadequate; or
- (iv) No acceptable bids have been received after formal advertising; or
- (v) The procurement of architectural/engineering and other professional services.
- (vi) The aggregate amount does not exceed \$50,000.

(5) *Additional procurement methods.* Additional innovative procurement methods may be used by the owner with prior written approval of the FmHA or its successor agency under Public Law 103-354 National Office.

(1) *Alternate contracting methods.* The services of the consulting engineer or architect and the general construction contractor shall normally be procured from unrelated sources in accordance with paragraph (j)(7) of this section. Alternate contracting methods which combine or rearrange design, inspection or construction services (such as design/build or construction management/constructor) may be used with Rural Development written approval.

(1) The owner will request Rural Development approval by providing the following information to the State Office for review and approval by the State Architect:

- (i) The owner's written request to use an unconventional contracting method with a description of the proposed method.
- (ii) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. This would include a nontechnical statement summarizing the work to be performed by the contractor, the expected results, the sequence in which the work is to be performed, and a proposed construction schedule.
- (iii) A proposed firm-fixed-price contract for the entire project which provides that the contractor shall be re-

sponsible for any extra cost which may result from errors or omissions in the services provided under the contract and compliance with all Federal, State, and local requirements effective on the contract execution date.

(iv) An evaluation of the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.

(v) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the facility.

(vi) Evidence that a qualified construction inspector who is independent of the contractor has or will be hired.

(vii) Preliminary plans and outline specifications. However, final plans and specifications must be completed and reviewed by Rural Development prior to the start of construction.

(viii) The owner's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the owner has the legal authority to enter into and fulfill the contract.

(2) The State Office may approve design/build or construction management/constructor projects if the contract amount is equal to or less than \$250,000.

(3) If the contract amount exceeds \$250,000, National Office prior concurrence must be obtained in accordance with § 1942.9(b) of this subpart. Additional information, such as plans and specifications, may be requested by the National Office.

(4) The Design/Build method of construction is one in which the architectural and engineering services, normally provided by an independent consultant to the owner, are combined with those of the General Contractor under a single source contract. These services are commonly provided by a Design/Build firm, a joint venture between an architectural firm and a construction firm, or a company providing pre-engineered buildings and design services.

(5) The Construction Management/constructor (CMc), acts in the capacity of a General Contractor and is actually responsible for the construction. This type of construction management is

also referred to as Construction Manager “At Risk.” The construction contract is between the owner and the CMc. The CMc, in turn, may subcontract for some or all of the work.

(6) The National Office may approve other alternative contact methods, such as Construction Management/advisor (CMA), with a recommendation from the State Office. The recommendation shall indicate the circumstances which prove this method advantageous to the applicant and the Government. A CMA acts in an advisory capacity to the owner, and the actual contract for construction is between the owner and a prime contractor or multiple prime contractors. When a contract for an architect and a CMA are being provided, it is important to make sure that separate professionals are not being paid to provide similar services. Further, paragraph (e)(3) of this section discourages separate contracts for construction.

(7) All alternate contracting method projects must comply with the requirements for “maximum open and free competition” in paragraph (j)(2) of this section. Choosing an alternate contracting method is not a way to avoid competition. Further information on procurement methods, which must be followed, is provided in paragraph (k) of this section.

(m) *Contracts awarded prior to preapplications.* Owners awarding construction or other procurement contracts prior to filing a pre-application with FmHA or its successor agency under Public Law 103-354 must comply with the following:

(1) *Evidence.* Provide conclusive evidence that the contract was entered into without intent to circumvent the requirements of FmHA or its successor agency under Public Law 103-354 regulations. The evidence will consist of at least the following:

(i) The lapse of a reasonable period of time between the date of contract award and the date of filing the preapplication which clearly indicates an irreconcilable failure of previous financial arrangements; or

(ii) A written statement explaining initial plans for financing the project and reasons for failure to obtain the planned credit.

(2) *Modifications.* Modify the outstanding contract to conform with the provisions of this subpart. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the FmHA or its successor agency under Public Law 103-354 financing. When all construction is complete and it is impracticable to modify the contracts, the owner must provide the certification required by paragraph (m)(4) of this section.

(3) *Consultant’s certification.* Provide a certification by an engineer or architect that any construction performed complies fully with the plans and specifications.

(4) *Owner’s certification.* Provide a certification by the owner that the contractor has complied with all statutory and executive requirements related to FmHA or its successor agency under Public Law 103-354 financing for construction already performed even though the requirements may not have been included in the contract documents.

(n) *Contract provisions.* In addition to provisions defining a sound and complete contract, any recipient of FmHA or its successor agency under Public Law 103-354 funds shall include the following contract provisions or conditions in all contracts:

(1) *Remedies.* Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. A realistic liquidated damage provision should also be included.

(2) *Termination.* All contracts exceeding \$10,000, shall contain provisions for termination by the owner including the manner by which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions when the contract may be terminated because of circumstances beyond the control of the contractor.

(3) *Surety*. In all contracts for construction or facility improvements awarded exceeding \$100,000, the owner shall require bonds, a bank letter of credit or cash deposit in escrow assuring performance and payment, each in the amount of 100 percent of the contract cost. The surety will normally be in the form of performance bonds and payment bonds; however, when other methods of surety may be necessary, bid documents must contain provisions for such alternative types of surety. The use of surety other than performance bonds and payment bonds requires concurrence by the National Office after submission of a justification by the State Director together with the proposed form of escrow agreement or letter of credit. For contracts of lesser amounts, the owner may require surety. When a surety is not provided, contractors will furnish evidence of payment in full for all materials, labor, and any other items procured under the contract. Form FmHA or its successor agency under Public Law 103-354 1924-10, "Release by Claimants," and Form FmHA or its successor agency under Public Law 103-354 1924-9, "Certificate of Contractor's Release," may be obtained at the local FmHA or its successor agency under Public Law 103-354 office and used for this purpose. The United States, acting through the Farmers Home Administration or its successor agency under Public Law 103-354, will be named as co-obligee on all surety unless prohibited by State law. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570 as amended and be legally doing business in the State where the facility is located.

(4) *Equal Employment Opportunity*. All contracts awarded in excess of \$10,000 by owners shall contain a provision requiring compliance with Executive Order 11246, entitled, "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by Department of Labor regulations 41 CFR part 60.

(5) *Anti-kickback*. All contracts for construction shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874).

This Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The owner shall report all suspected or reported violations to FmHA or its successor agency under Public Law 103-354.

(6) *Records*. All negotiated contracts (except those of \$2,500 or less) awarded by owners shall include a provision to the effect that the owner, FmHA or its successor agency under Public Law 103-354, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific Federal loan program for the purpose of making audits, examinations, excerpts, and transcriptions. Owners shall require contractors to maintain all required records for three years after owners make final payments and all other pending matters are closed.

(7) *State Energy Conservation Plan*. Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

(8) *Change orders*. The construction contract shall require that all contract change orders be approved in writing by FmHA or its successor agency under Public Law 103-354.

(9) *FmHA or its successor agency under Public Law 103-354 concurrence*. All contracts must contain a provision that they shall not be effective unless and until the FmHA or its successor agency under Public Law 103-354 State Director or designee concurs in writing.

(10) *Retainage*. All construction contracts shall contain adequate provisions for retainage. No payments will be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the contractor. The retainage shall not be less than an amount equal to 10 percent of an approved partial payment estimate until 50 percent of the work

has been completed. If the job is proceeding satisfactory at 50 percent completion, further partial payments may be made in full, however, previously retained amounts shall not be paid until construction is substantially complete. Additional amounts may be retained if the job is not proceeding satisfactorily, but in no event shall the total retainage be more than 10 percent of the value of the work completed.

(11) *Other compliance requirements.* Contracts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations 40 CFR part 15, which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to FmHA or its successor agency under Public Law 103–354 and to the U.S. Environmental Protection Agency, Assistant Administrator for Enforcement. Solicitations and contract provisions shall include the requirements of 40 CFR part 15.4(c) as set forth in guide 18 of this subpart which is available in all FmHA or its successor agency under Public Law 103–354 offices.

(o) *Contract administration.* Owners shall be responsible for maintaining a contract administration system to monitor the contractors' performance and compliance with the terms, conditions, and specifications of the contracts.

(1) *Preconstruction conference.* Prior to beginning construction, the owner will schedule a preconstruction conference where FmHA or its successor agency under Public Law 103–354 will review the planned development with the owner, its architect or engineer, resident inspector, attorney, contractor(s), and other interested parties. The conference will thoroughly cover applicable items included in Form FmHA or its successor agency under Public Law 103–354 1924–16, "Record of Preconstruction Conference," and the discussion and agreements will be doc-

umented. Form FmHA or its successor agency under Public Law 103–354 1924–16 may be used for this purpose.

(2) *Monitoring reports.* Each owner will be required to monitor and provide reports to FmHA or its successor agency under Public Law 103–354 on actual performance during construction for each project financed, or to be financed, in whole or in part with FmHA or its successor agency under Public Law 103–354 funds to include:

(i) A comparison of actual accomplishments with the construction schedule established for the period. The partial payment estimate may be used for this purpose.

(ii) A narrative statement giving full explanation of the following:

(A) Reasons why established goals were not met.

(B) Analysis and explanation of cost overruns or high unit costs and how payment is to be made for the same.

(iii) If events occur between reports which have a significant impact upon the project, the owner will notify FmHA or its successor agency under Public Law 103–354 as soon as any of the following conditions are met:

(A) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives or prevent the meeting of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(B) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected or which will result in cost underruns or lower unit costs than originally planned and which may result in less FmHA or its successor agency under Public Law 103–354 assistance.

(3) *Inspection.* Full-time resident inspection is required for all construction unless a written exception is made by FmHA or its successor agency under Public Law 103–354 upon written request of the owner. Unless otherwise agreed, the resident inspector will be provided by the consulting architect/engineer. Prior to the preconstruction conference, the architect/engineer will

submit a resume of qualifications of the resident inspector to the owner and to FmHA or its successor agency under Public Law 103-354 for acceptance in writing. If the owner provides the resident inspector, it must submit a resume of the inspector's qualifications to the project architect/engineer and FmHA or its successor agency under Public Law 103-354 for acceptance in writing prior to the preconstruction conference. The resident inspector will work under the general supervision of the project architect/engineer. A guide format for preparing daily inspection reports (Guide 11 of this subpart) and Form FmHA or its successor agency under Public Law 103-354 1924-18, "Partial Payment Estimate," are available on request from FmHA or its successor agency under Public Law 103-354.

(4) *Inspector's daily diary.* The resident inspector will maintain a record of the daily construction progress in the form of a daily diary and daily inspection reports as follows:

(i) A complete set of all daily construction records will be maintained and the original set furnished to the owner upon completion of construction.

(ii) All entries shall be legible and shall be made in ink.

(iii) Daily entries shall include but not be limited to the date, weather conditions, number and classification of personnel working on the site, equipment being used to perform the work, persons visiting the site, accounts of substantive discussions, instructions given to the contractors, directions received, all significant or unusual happenings involving the work, any delays, and daily work accomplished.

(iv) The daily entries shall be made available to FmHA or its successor agency under Public Law 103-354 personnel and will be reviewed during project inspections.

(5) *Prefinal inspections.* A prefinal inspection will be made by the owner, resident inspector, project architect or engineer, representatives of other agencies involved, the District Director and a FmHA or its successor agency under Public Law 103-354 State Office staff representative, preferably the State Staff architect or engineer. Prefinal inspections may be made

without FmHA or its successor agency under Public Law 103-354 State Office staff participation if the State Director or a designee determines that the facility does not utilize complicated construction techniques, materials or equipment for facilities such as small fire stations, storage buildings or minor utility extensions, and that an experienced District Office staff representative will be present. The inspection results will be recorded on Form FmHA or its successor agency under Public Law 103-354 1924-12, "Inspection Report," and a copy provided to all appropriate parties.

(6) *Final inspection.* A final inspection will be made by FmHA or its successor agency under Public Law 103-354 before final payment is made.

(7) *Change in development plans.* (i) Changes in development plans may be approved by FmHA or its successor agency under Public Law 103-354 when requested by owners, provided:

(A) Funds are available to cover any additional costs; and

(B) The change is for an authorized loan purpose; and

(C) It will not adversely affect the soundness of the facility operation or FmHA or its successor agency under Public Law 103-354's security; and

(D) The change is within the scope of the contract.

(ii) Changes will be recorded on Form FmHA or its successor agency under Public Law 103-354 1924-7, "Contract Change Order," or, other similar forms may be used with the prior approval of the State Director or designee. Regardless of the form, change orders must be approved by the FmHA or its successor agency under Public Law 103-354 State Director or a designated representative.

(iii) Changes should be accomplished only after FmHA or its successor agency under Public Law 103-354 approval on all changes which affect the work and shall be authorized only by means of contract change order. The change order will include items such as:

(A) Any changes in labor and material and their respective cost.

(B) Changes in facility design.

(C) Any decrease or increase in quantities based on final measurements

that are different from those shown in the bidding schedule.

(D) Any increase or decrease in the time to complete the project.

(iv) All changes shall be recorded on chronologically numbered contract change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.

[50 FR 7296, Feb. 22, 1985, as amended at 52 FR 8035, Mar. 13, 1987; 53 FR 6791, Mar. 3, 1988; 54 FR 14334, Apr. 11, 1989; 54 FR 18883, May 3, 1989; 61 FR 65156, Dec. 11, 1996; 77 FR 29539, May 18, 2012]

**§ 1942.19 Information pertaining to preparation of notes or bonds and bond transcript documents for public body applicants.**

(a) *General.* This section includes information for use by public body applicants in the preparation and issuance of evidence of debt (bonds, notes, or debt instruments, herein referred to as bonds). This section is made available to applicants as appropriate for application processing and loan docket preparation.

(b) *Policies related to use of bond counsel.* Preparation of the bonds and the bond transcript documents will be the responsibility of the applicant. Public body applicants will obtain the services and opinion of recognized bond counsel with respect to the validity of a bond issue, except as provided in (b) (1) through (3) below. The applicant normally will be represented by a local attorney who will obtain the assistance of a recognized bond counsel firm which has experience in municipal financing with such investors as investment dealers, banks, and insurance companies.

(1) *Issues of \$250,000 or less.* At the option of the applicant for issues of \$250,000 or less, bond counsel may be used for the issuance of a final opinion only and not for the preparation of the bond transcript and other documents when the applicant, FmHA or its successor agency under Public Law 103–354, and bond counsel have agreed in advance as to the method of preparation of the bond transcript documents. Under such circumstances the applicant will be responsible for the preparation of the bond transcript documents.

(2) *Issues of \$50,000 or less.* At the option of the applicant and with the prior approval of the FmHA or its successor agency under Public Law 103–354 State Director, the applicant need not use bond counsel if:

(i) The amount of the issue does not exceed \$50,000 and the applicant recognizes and accepts the fact that processing the application may require additional legal and administrative time.

(ii) There is a significant cost saving to the applicant particularly with reference to total legal fees after determining what bond counsel would charge as compared with what the local attorney will charge without bond counsel.

(iii) The local attorney is able and experienced in handling this type of legal work.

(iv) The applicant understands that, if it is required by FmHA or its successor agency under Public Law 103–354 to refinance its loan pursuant to the statutory refinancing requirements, it will probably have to obtain at its expense a bond counsel's opinion at that time.

(v) All bonds will be prepared in accordance with this regulation and will conform as nearly as possible to the preferred methods of preparation stated in paragraph (e) of this section but still be consistent with State law.

(vi) Many matters necessary to comply with FmHA or its successor agency under Public Law 103–354 requirements such as land rights, easements, and organizational documents will be handled by the applicant's local attorney. Specific closing instructions will be issued by the Office of the General Counsel of the U.S. Department of Agriculture for the guidance of FmHA or its successor agency under Public Law 103–354.

(3) *For loans of less than \$500,000.* The applicant shall not be required to use bond counsel in a straight mortgage-note situation where competitive bidding is not required for the sale of the debt instrument, unless a complicated financial situation exists with the applicant. In addition, if there is a known backlog in a particular OGC regional office the applicant will be advised of such backlog and it will be suggested to the applicant that the appointment

of bond counsel may be more expeditious. However, it will be the decision of the applicant whether or not to appoint bond counsel. The applicant must comply with (b)(2) (iii) through (vi) of this section.

(c) *Bond transcript documents.* Any questions with respect to FmHA or its successor agency under Public Law 103-354 requirements should be discussed with the FmHA or its successor agency under Public Law 103-354 representatives. The bond counsel (or local counsel where no bond counsel is involved) is required to furnish at least two complete sets of the following to the applicant, who will furnish one complete set to FmHA or its successor agency under Public Law 103-354:

(1) Copies of all organizational documents.

(2) Copies of general incumbency certificate.

(3) Certified copies of minutes or excerpts therefrom of all meetings of the applicant's governing body at which action was taken in connection with the authorization and issuance of the bonds.

(4) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding of a favorable bond election, if such an election is necessary in connection with bond issuance.

(5) Certified copies of the resolution or ordinances or other documents, such as the bond authorizing resolutions or ordinance and any resolution establishing rates and regulating the use of the improvement, if such documents are not included in the minutes furnished.

(6) Copies of official Notice of Sale and affidavit of publication of Notice of Sale where a public sale is required by State statute.

(7) Specimen bond, with any attached coupons.

(8) Attorney's no-litigation certificate.

(9) Certified copies of resolutions or other documents pertaining to the bond award.

(10) Any additional or supporting documents required by bond counsel.

(11) For loans involving multiple advances of FmHA or its successor agen-

cy under Public Law 103-354 loan funds a preliminary approving opinion of bond counsel (or local counsel if no bond counsel is involved) if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered on or before the first advance of loan funds and state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan subject only to changes during the advance of funds such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates.

(12) Preliminary approving opinion, if any, and final unqualified approving opinion of recognized bond counsel (or local counsel if no bond counsel is involved) including opinion regarding interest on bonds being exempt from Federal and any State income taxes. On approval of the Administrator, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation. It is permissible for such opinions to contain language referring to the last sentence of section 306(a)(1) or to section 309A(h) of the Consolidated Farm and Rural Development Act [7 U.S.C. 1926(a)(1) or 1929a(h)], and providing that if the bonds evidencing the indebtedness in question are required by the Federal Government and sold on an insured basis from the Agriculture Credit Insurance Fund, or the Rural Development Insurance Fund, the interest on such bonds will be included in gross income for the purpose of the Federal income tax statutes.

(d) *Interim financing from commercial sources during construction period for loans of \$50,000 or more.* In all cases where it is possible for funds to be borrowed at current market interest rates on an interim basis from commercial sources, such interim financing will be obtained so as to preclude the necessity for multiple advances of FmHA or its successor agency under Public Law 103-354 funds.

(e) *Permanent instruments for FmHA or its successor agency under Public Law 103-354 loans to repay interim commercial*

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*financing.* FmHA or its successor agency under Public Law 103–354 loans will be evidenced by the following types of instruments chosen in accordance with the following order of preference:

(1) *First preference—Form FmHA or its successor agency under Public Law 103–354 440–22, “Promissory Note (Association or Organization)”.* If legally permissible use Form FmHA or its successor agency under Public Law 103–354 440–22 for insured loans.

(2) *Second preference—single instruments with amortized installments.* If Form FmHA or its successor agency under Public Law 103–354 440.22 is not legally permissible, use a single instrument providing for amortized installments. Show the full amount of the loan on the face of the document and provide for entering the date and amount of each FmHA or its successor agency under Public Law 103–354 advance on the reverse thereof or on an attachment to the instrument. Form FmHA or its successor agency under Public Law 103–354 440–22 should be followed to the extent possible. When principal payment is deferred, no attempt should be made to compute in dollar terms the amount of interest due on these installment dates. Rather the instrument should provide that “interest only” is due on these dates. The appropriate amortized installment computed as follows will be shown due on the installment date thereafter.

(i) *Annual payments—*Subtract the due date of the *last annual interest only* installment from the due date of the final installment to determine the number of annual payments applicable. When there are no interest only installments, the number of annual payments will equal the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in FmHA or its successor agency under Public Law 103–354 Amortization Tables and round to the next higher dollar. Example of Computation of Annual Payment:

Date of Loan Closing: 7–5–1976  
Amount of Loan: \$100,000.00  
Interest Rate: 5%  
Amortization Period: 40 years  
Interest Only Installments: 7–5–1977 and 7–5–1978

First Regular Installment: 7–5–1979

Final Installment: 7–5–2016

Computation:

2016 – 1978 = 38 annual payments

$\$100,000.00 \times .05929 = \$5,929.00$  annual payment due

(ii) *Semiannual payments—*Multiply by two the number of years between the due date of the *last annual interest only* installment and the due date of the final installment to determine the correct number of semiannual periods applicable. When there are no interest only installments, multiply by two the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in FmHA or its successor agency under Public Law 103–354 Amortization Tables and round to the next higher dollar. Example of Computation of Semiannual Payment:

Date of Loan Closing: 7–5–1976

Amount of Loan: \$100,000.00

Interest Rate: 5%

Amortization Period: 40 years

Interest Only Installments: 7–5–1977 and 7–5–1978

First Regular Installment: 7–5–1979

Final Installment: 7–5–2016

Computation:

2016 – 1978 =  $38 \times 2 = 76$  semiannual periods

$\$100,000.00 \times .02952 = \$2,952.00$  semiannual payment due

(iii) *Monthly payments—*Multiply by twelve the number of years between the due date of the *last annual interest only* installment and the final installment to determine the number of monthly payments applicable. When there are no interest only installments, multiply by twelve the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in FmHA or its successor agency under Public Law 103–354 Amortization Tables and round to the next higher dollar. Example of Computation of Monthly Payment:

Date of Loan Closing: 7–5–1976

Amount of Loan: \$100,000.00

Interest Rate: 5%

Amortization Period: 40 years

Interest Only Installments: 7–5–1977 and 7–5–1978

First Regular Installment: 7–5–1979

Final Installment: 7–5–2016

Computation:

2016 - 1978 =  $38 \times 12 = 456$  monthly payments  
 $\$100,000.00 \times .00491 = \$491.00$  monthly payment due

(3) *Third preference—single instrument with installments of principal plus interest.* If a single instrument with amortized installments is not legally permissible, use a single instrument providing for installments of principal plus interest accrued on the unmatured principal balance. The principal should be in an amount best adapted to making principal retirement and interest payments which closely approximate equal installments of combined interest and principal as required by the first two preferences.

(i) The repayment terms concerning interest only installments described in paragraph (e)(2) of this section, "Second preference" applies.

(ii) The instrument shall contain in substance the following provisions:

(A) A statement of principal maturities and due dates.

(B) Payments made on indebtedness evidenced by this instrument shall be applied to the interest due through the next installment due date and the balance to principal in accordance with the terms of the bond. Payments on delinquent accounts will be applied in the following sequence:

- (1) Billed delinquent interest,
- (2) Past due interest installments,
- (3) Past due principal installments,
- (4) Interest installment due, and
- (5) Principal installment due.

Extra payments and payments made from security depleting sources shall be applied to the principal last to come due or as specified in the bond instrument.

(4) *Fourth preference—serial bonds with installments of principal plus interest.* If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be delivered in the order of their numbers. Such bonds will conform with the minimum requirements of paragraph (h) of this section. Rules for application of payments on serial bonds will be the same as those for principal installment single bonds as set out in the preceding paragraph (e)(3) of this section.

(f) *Multiple advances of FmHA or its successor agency under Public Law 103-354 funds using permanent instruments.* Where interim financing from commercial sources is not available, FmHA or its successor agency under Public Law 103-354 loan proceeds will be disbursed on an "as needed by borrower" basis in amounts not to exceed the amount needed during 30-day periods.

(g) *Multiple advances of FmHA or its successor agency under Public Law 103-354 funds using temporary debt instrument.* When none of the instruments described in paragraph (e) of this section are legally permissible or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advance of FmHA or its successor agency under Public Law 103-354 loan funds and will be for the full amount of the FmHA or its successor agency under Public Law 103-354 loan. The instrument will be prepared by bond counsel (or local counsel if bond counsel is not involved) and approved by the State Director and OGC. At the same time FmHA or its successor agency under Public Law 103-354 delivers the last advance, the borrower will deliver the permanent bond instrument and the canceled temporary instrument will be returned to the borrower. The approved debt instrument will show at least the following:

- (1) The date from which each advance will bear interest.
- (2) The interest rate.
- (3) A payment schedule providing for interest on outstanding principal at least annually.
- (4) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instrument(s).

(h) *Minimum bond specifications.* The provisions of this paragraph are minimum specifications only, and must be followed to the extent legally permissible.

(1) *Type and denominations.* Bond resolutions or ordinances will provide that the instrument(s) be either a bond representing the total amount of the indebtedness or serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than \$1000). Single bonds may provide for repayment of

principal plus interest or amortized installments; amortized installments are preferable from the standpoint of FmHA or its successor agency under Public Law 103-354. Coupon bonds will not be used unless required by State statute.

(i) To compute the value of each coupon when the bond denomination is consistent:

(A) Multiply the amount of the loan or advance by the interest rate and divide the product by 365 days.

(B) Multiply the daily accrual factor determined in (A) by the number of days from the date of advance or last installment date to the next installment date.

(C) Divide the interest computed in (B) by the number of bonds securing the advance; this is the individual coupon amount.

(ii) to compute the value of each coupon when the bond denomination varies:

(A) Multiply the denomination of the bond by the interest rate and divide the product by 365 days.

(B) Multiply the daily accrual factor determined in (A) by the number of days from the date of advance or last installment date to the next installment due date; this is the individual coupon amount.

(2) *Bond registration.* Bonds will contain provisions permitting registration as to both principal and interest. Bonds purchased by FmHA or its successor agency under Public Law 103-354 will be registered in the name of "United States of America, Farmers Home Administration or its successor agency under Public Law 103-354," and will remain so registered at all times while the bonds are held or insured by the United States. The address of FmHA or its successor agency under Public Law 103-354 for registration purposes will be that of the appropriate FmHA or its successor agency under Public Law 103-354 State Office.

(3) *Size and quality.* Size of bonds and coupons should conform to standard practice. Paper must be of sufficient quality to prevent deterioration through ordinary handling over the life of the loan.

(4) *Date of bond.* Bonds will preferably be dated as of the day of delivery, how-

ever, may be dated another date at the option of the borrower and subject to approval by FmHA or its successor agency under Public Law 103-354. If the date of delivery is other than the date of the bond, the date of delivery will be stated in the bond. In all cases, interest will accrue from the date of delivery of the funds.

(5) *Payment date.* Loan payments will be scheduled to coincide with income availability and be in accordance with State law. If consistent with the foregoing, monthly payments will be required and will be enumerated in the bond, other evidence of indebtedness, or other supplemental agreement. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual P&I bonds will be used. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months, respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided.

(6) [Reserved]

(7) *Redemptions.* Bonds should contain customary redemption provisions, subject, however, to unlimited right of redemption without premium of any bonds held by FmHA or its successor agency under Public Law 103-354 except to the extent limited by the provisions under the "Third Preference" and "Fourth Preference" in paragraph (e) of this section.

(8) *Additional revenue bonds.* Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless the net revenues (that is, unless otherwise defined by the State statute, gross revenues less essential operation and maintenance expense) for the fiscal year preceding the year in which such parity bonds are to be issued, were 120 percent of the average annual debt service requirements on all bonds then outstanding and those to be issued; provided, that this limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then outstanding principal indebtedness. Junior

and subordinate bonds may be issued in accordance with the loan agreement.

(9) *Scheduling of FmHA or its successor agency under Public Law 103-354 payments when joint financing is involved.* In all cases in which FmHA or its successor agency under Public Law 103-354 is participating with another lender in the joint financing of the project to supply funds required by one applicant, the FmHA or its successor agency under Public Law 103-354 payments of principal and interest should approximate amortized installments.

(10) *Precautions.* The following types of provisions in debt instruments should be avoided.

(i) Provisions for the holder to manually post each payment to the instrument.

(ii) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than FmHA or its successor agency under Public Law 103-354, may post the date and amount of each advance or repayment on the instrument.

(iii) Defeasance provisions in loan or bond resolutions. When a bond issue is defeased, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes FmHA or its successor agency under Public Law 103-354 from requiring graduation before the final maturity date, it represents a violation of the statutory refinancing requirement, therefore it is disallowed.

(iv) Provisions that amend covenants contained in Forms FmHA 1942-47, "Loan Resolution (Public Bodies)," or FmHA 1942-9, "Loan Resolution Security Agreement."

(11) *Multiple Loan Instruments.* The following will be adhered to when preparing debt instruments:

(i) When more than one loan type is used in financing a project, each type of loan will be evidenced by a separate debt instrument or series of debt instruments.

(ii) Loan funds obligated in different fiscal years and those obligated with different interest rates or terms in the same fiscal year will be evidenced by separate debt instruments.

(iii) Loan funds obligated for the same loan type in the same fiscal year at the same interest rate and term may be combined in the same debt instrument; provided the borrower has been notified on Form FmHA or its successor agency under Public Law 103-354 1940-1, "Request for Obligation of Funds", of the action.

(i) *Bidding by FmHA or its successor agency under Public Law 103-354.* Bonds offered for public sale shall be offered in accordance with State law, in such a manner to encourage public bidding. FmHA or its successor agency under Public Law 103-354 will not submit a bid at the advertised sale unless required by State law, nor will reference to FmHA or its successor agency under Public Law 103-354's rates and terms be included. If no acceptable bid is received, FmHA or its successor agency under Public Law 103-354 will negotiate the purchase of the bonds.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6791, Mar. 3, 1988; 54 FR 18883, May 3, 1989; 56 FR 29168, June 26, 1991; 68 FR 61331, Oct. 28, 2003]

#### § 1942.20 Community Facility Guides.

(a) The following documents are attached and made part of this subpart and may be used by FmHA or its successor agency under Public Law 103-354 officials in administering this program.

(1) Guide 1 and 1a—Guide Letter for Use in Informing Private Lender of FmHA or its successor agency under Public Law 103-354's Commitment.

(2) Guide 2—Water Users Agreement.

(3) Guide 3—Service Declination Statement.

(4) Guide 4—Bylaws.

(5) Guide 5—Financial Feasibility Report.

(6) Guide 6—Preliminary Architectural Feasibility Report.

(7) Guide 7—Preliminary Engineering Report Water Facility.

(8) Guide 8—Preliminary Engineering Report Sewerage Systems.

(9) Guide 9—Preliminary Engineering Report Solid Waste Disposal Systems.

(10) Guide 10—Preliminary Engineering Report Storm Waste-Water Disposal.

(11) Guide 11—Daily Inspection Report.

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(12) Guide 12—Memorandum of Understanding Between the Economic Development Administration—Department of Commerce and the Farmers Home Administration or its successor agency under Public Law 103-354—Department of Agriculture Pertaining to EDA Public Works Projects Assisted by an FmHA or its successor agency under Public Law 103-354 Loan.

(13) Guide 13—Memorandum of Understanding Between the Economic Development Administration—Department of Commerce and the Farmers Home Administration or its successor agency under Public Law 103-354—Department of Agriculture Regarding Supplementary Grant Assistance for the Construction of Public Works and Development Facilities.

(14) Guide 14—Legal Services Agreement.

(15) Guide 15—Community Facility Borrower's Application.

(16) Guide 16—Community Facility Loan Docket.

(17) Guide 17—Construction Contract Documents—Short Form.

(18) Guide 18—FmHA or its successor agency under Public Law 103-354 Supplemental General Conditions.

(19) Guide 19—Construction Contract Documents.

(20) Guide 20—Agreement for Engineering Services (FmHA or its successor agency under Public Law 103-354/EPA Jointly Funded Projects).

(21) Guide 21—Review of Audit Reports.

(22) Guide 22—Delinquent Accounts Positive Action Plan.

(23) Guide 23—Agreement for Joint Use of Electric System Poles.

(24) Guide 24—Minimum Suggested Contents of Management Agreements.

(25) Guide 25—Joint Policy Statement Between EPA and FmHA or its successor agency under Public Law 103-354.

(26) Guide 26—Community Programs Project Selection Criteria.

(27) Exhibit A—Circular No. A-128.

(28) Exhibit B—Department of Agriculture Regional Inspector General (OIG).

(b) These guides and exhibits are for use by FmHA or its successor agency under Public Law 103-354 officials, applicants and applicant's officials and/or

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agents on certain matters related to the planning, development, and operation of essential community facilities which involve the use of loans and/or grants from FmHA or its successor agency under Public Law 103-354. This includes activities related to applying for and obtaining such financial assistance. These guides and exhibits are not published in the FEDERAL REGISTER, however, they are available in any FmHA or its successor agency under Public Law 103-354 office.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988]

### § 1942.21 Statewide nonmetropolitan median household income.

*Statewide nonmetropolitan median household income* means the median household income of the State's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places, of 50,000 or more population.

[69 FR 65519, Nov. 15, 2004]

### §§ 1942.22–1942.49 [Reserved]

### § 1942.50 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0015. Public reporting burden for this collection of information is estimated to vary from five minutes to 15 hours per response, with an average of 2.7 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575-0015), Washington, DC 20503.

[60 FR 11019, Mar. 1, 1995]

### Subpart B [Reserved]

### Subpart C—Fire and Rescue and Other Small Community Facilities Projects

SOURCE: 52 FR 43726, Nov. 16, 1987, unless otherwise noted.

#### § 1942.101 General.

This subpart provides the policies and procedures for making and processing insured Community Facilities (CF) loans for facilities that will primarily provide fire or rescue services and other small essential community facility projects and applies to fire and rescue and other Community Facilities loans for projects costing \$300,000 and under. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Rural Development employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with a Rural Development employee. Community Facilities loans for other types of facilities, and those costing in excess of \$300,000, are defined in subpart A of this part.

[68 FR 65830, Nov. 24, 2003]

#### § 1942.102 Nondiscrimination.

(a) Federal statutes provide for extending Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap. The participants must possess the capacity to enter into legal contracts under State and local statutes.

(b) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes are eligible to apply for and are encouraged to participate in this program. Such tribes might not be subject to State and local laws or jurisdiction. However, any requirements of this subpart that affect applicant eligibility, the adequacy of FmHA or its successor agency under Public Law 103-354's security or the adequacy of service to users of the facility and

all other requirements of this subpart must be met.

#### § 1942.103 Definitions.

*Agency.* The Rural Housing Service (RHS), an agency of the U.S. Department of Agriculture.

*Approval official.* An official who has been delegated loan or grant approval authorities within applicable programs, subject to certain dollar limitations.

*Construction.* The act of building or putting together a facility that is a part of, or physically attached to, real estate. This does not include procurement of major equipment even though the equipment may be custom built to meet the owner's requirements.

*Owner.* An applicant or borrower.

*Processing office.* The office designated by the State program official to accept and process applications for Community Facilities projects.

*Regional Attorney or OGC.* The head of a Regional Office of the General Counsel (OGC).

*Small Community Facilities projects.* Community Facilities loans costing \$300,000 and under.

[68 FR 65830, Nov. 24, 2003]

#### § 1942.104 Application processing.

(a) *General.* Prospective applicants should request assistance by filing SF 424.2, "Application for Federal Assistance (For Construction)," with the Local or Area Rural Development Office. When practical, approval officials should meet with prospective applicants before an application is filed to discuss eligibility and Rural Development requirements and processing procedures. Throughout loan processing, Rural Development should confer with applicant officials as needed to ensure that applicant officials understand the current status of the processing of their application, what steps and determinations are necessary, and what is required from them. Rural Development should assist the applicant as needed and generally try to develop and maintain a cooperative working relationship with the applicant.

(b) *Unfavorable decision.* If, at any time prior to loan approval, it is decided that favorable action will not be taken on an application, the approval

## § 1942.105

official will notify the applicant, in writing, of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by Rural Development may be requested by the applicant in accordance with subpart B of part 1900 of this chapter. The following statement will also be made on all notifications of adverse action:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

[52 FR 43726, Nov. 16, 1987, as amended at 54 FR 47197, Nov. 13, 1989; 55 FR 13504, Apr. 11, 1990; 68 FR 65830, Nov. 24, 2003; 68 FR 69001, Dec. 11, 2003]

### § 1942.105 Environmental review.

FmHA or its successor agency under Public Law 103-354 must conduct and document an environmental review for each proposed project in accordance with subpart G of part 1940 of this chapter. The review should be completed as soon as possible after receipt of an application. The loan approving official must determine an adequate environmental review has been completed before requesting an obligation of funds.

### § 1942.106 Intergovernmental review.

(a) Loans under this subpart are subject to intergovernmental review requirements set forth in U. S. Department of Agriculture regulations 7 CFR 3015, subpart V and RD Instruction 1970-I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site.

(b) State intergovernmental review agencies that have selected community facility loans as a program they want to review may not be interested in reviewing proposed loans for fire and rescue facilities. In such cases, the State Director should obtain a letter from

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the State single point of contact exempting fire and rescue loans from intergovernmental consultation review. A copy of the letter should be placed in the case file for each fire and rescue facility application in lieu of completing the intergovernmental review process.

(c) When an application is filed and adverse comments are not expected, the District Director should proceed with application processing pending intergovernmental review. The loan should not be obligated until any required review process has been completed.

(d) Funds allocated for use under this subpart are also for the use of eligible Indian tribes within the State, regardless of whether State development strategies include Indian reservations. Eligible Indian tribes must have equal opportunity to participate in the program as compared with other residents of the State.

[52 FR 43726, Nov. 16, 1987, as amended at 61 FR 6309, Feb. 20, 1996; 76 FR 80730, Dec. 27, 2011]

### § 1942.107 Priorities.

(a) Eligible applications must be selected for processing in accordance with § 1942.17(c) of subpart A of this part 1942.

(b) The District Director must score each eligible application in accordance with § 1942.17(c)(2)(iii) of subpart A of this part 1942. The District Director must then notify the State Director of the score, proposed loan amount, and other pertinent data. The State Director should determine as soon as possible if the project has sufficient priority for further processing and notify the District Director. Normally, this consultation should be handled by telephone and documented in the running record.

(c) Applicants who appear eligible but do not have the priority necessary for further consideration at this time should be notified that funds are not available, requested to advise whether they wish to have their application maintained for future consideration and given the following notice:

You are advised against incurring obligations which would limit the range of alternatives to be considered, or which cannot be

fulfilled without FmHA or its successor agency under Public Law 103-354 funds until the funds are actually made available. Therefore, you should refrain from such actions as initiating engineering and legal work, taking actions which would have an adverse effect on the environment, taking options on land rights, developing detailed plans and specifications, or inviting construction bids until notified by Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 to proceed.

**§ 1942.108 Application docket preparation and review.**

(a) *Guides.* Application dockets should be developed in accordance with § 1942.2(c) of subpart A of this part 1942.

(b) [Reserved]

(c) *Budgets.* All applicants must complete Form FmHA or its successor agency under Public Law 103-354 442-7, "Operating Budget," except as provided in this paragraph. Applicants with annual incomes not exceeding \$100,000 may, with concurrence of the District Director, use Form FmHA or its successor agency under Public Law 103-354 1942-52, "Cash Flow Projection," instead of Form FmHA or its successor agency under Public Law 103-354 442-7. Projections should be provided for the current year and each year thereafter until the facility is expected to have been in operation for a full year and a full annual installment paid on the loan.

(d) *Letter of conditions.* The District Director should prepare and issue a letter of conditions in accordance with § 1942.5 (a)(1) and (c) of subpart A of this part 1942.

(e) *Organizational review.* As early in the application process as practical, the approval official should obtain copies of organization documents from each applicant and forward them through the State Office to the Regional Attorney for review and comments. The Regional Attorney's comments should be received and considered before obligation of funds.

(f) *National Office review.* Applications that require National Office review will be submitted in accordance with § 1942.5(b) of subpart A of this part 1942.

(g) *State Office review.* The State Office must monitor fire and rescue and other small community facility project loanmaking and servicing and provide

guidance, assistance, and training as necessary to ensure the activities are accomplished in an orderly manner consistent with the Agency's regulations. The processing office should request advice and assistance from the State Office as needed. The State Director may require all or part of a specific application docket to be submitted to the State Office for review at any time. The State Director may determine that one or more of the processing office staffs do not have adequate training and expertise to routinely complete application dockets without State Office review. In such cases, the State Director should establish guidelines by memorandum or by State supplement to the subpart for the necessary State Office reviews.

(h) *Loan approval and fund obligation.* Loans must be approved and obligated in accordance with § 1942.5(d) of subpart A of this part 1942 and subpart A of part 1901 of this chapter.

[52 FR 43726, Nov. 16, 1987, as amended at 54 FR 47197, Nov. 13, 1989; 67 FR 60854, Sept. 27, 2002; 68 FR 65830, Nov. 24, 2003]

**§§ 1942.109-1942.110 [Reserved]**

**§ 1942.111 Applicant eligibility.**

(a) *General.* Loans under this subpart are subject to the provisions of § 1942.17(b) of subpart A of this part 1942.

(b) *Credit elsewhere determinations.* The approval official must determine whether financing from commercial sources at reasonable rates and terms is available. If credit elsewhere is indicated, the approval official should inform the applicant and recommend the applicant apply to commercial sources for financing. To provide a basis for referral of only those applicants who may be able to finance projects through commercial sources, approval officials should maintain liaison with representatives of lenders in the area. The State Director should keep approval officials informed regarding lenders outside the area who might make loans in the area. Approval officials should maintain criteria for determining applications that should be referred to commercial lenders and

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maintain a list of lender representatives interested in receiving such referrals.

(c) *Public use.* Loans under this subpart are subject to the provisions of § 1942.17(e) of subpart A of this part 1942.

[52 FR 43726, Nov. 16, 1987, as amended at 68 FR 65830, Nov. 24, 2003]

### § 1942.112 Eligible loan purposes.

(a) Funds may be used:

(1) To construct, enlarge, extend, or otherwise improve essential community facilities primarily providing fire or rescue services primarily to rural residents and rural business. Rural businesses would include facilities such as educational and other publicly owned facilities. “Otherwise improve” includes but is not limited to the following:

(i) The purchase of major equipment, such as fire trucks and ambulances, which will, in themselves, provide an essential service to rural residents.

(ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service.

(iii) The construction or development of an essential community facility requisite to the beneficial and orderly development of a community operated on a nonprofit basis in accordance with § 1942.17(d) of this subpart. This subpart includes those projects meeting the definition of a small community facility project.

(2) To pay the following expenses, but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraph (a)(1) of this section:

(i) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archaeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(ii) Interest on loans until the facility is self-supporting but not for more than 3 years unless a longer period is approved by the National Office; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than 2 years unless a longer period is approved by the National Office; and

interest on interim financing, including interest charges on interim financing from sources other than FmHA or its successor agency under Public Law 103–354.

(iii) Costs of acquiring interest in land, rights such as water rights, leases, permits, rights-of-way, and other evidence of land or water control necessary for development of the facility.

(iv) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(v) Initial operating expenses for a period ordinarily not exceeding 1 year when the borrower is unable to pay such expenses.

(vi) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(A) The debts being refinanced are a secondary part of the total loan;

(B) The debts are incurred for the facility or service being financed or any part thereof; and

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(3) To pay obligations for construction or procurement incurred before loan approval. Construction work or procurement actions should not be started and obligations for such work or materials should not be incurred before the loan is approved. However, if there are compelling reasons for proceeding with construction or procurement before loan approval, applicants may request FmHA or its successor agency under Public Law 103–354 approval to pay such obligations. Such requests may be approved if FmHA or its successor agency under Public Law 103–354 determines that:

(i) Compelling reasons exist for incurring obligations before loan approval; and

(ii) The obligations will be incurred for authorized loan purposes; and

(iii) Contract documents have been approved by FmHA or its successor agency under Public Law 103–354; and

(iv) All environmental requirements applicable to FmHA or its successor agency under Public Law 103–354 and the applicant have been met; and

(v) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic, material or other liens that may attach to the security property. FmHA or its successor agency under Public Law 103-354 may authorize payment of such obligations at the time of loan closing. FmHA or its successor agency under Public Law 103-354's authorization to pay such obligations, however, is on the condition that it is not committed to make the loan; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all loan approval requirements. The applicant's request and FmHA or its successor agency under Public Law 103-354 authorization for paying such obligations shall be in writing. If construction or procurement is started without FmHA or its successor agency under Public Law 103-354 approval, post approval in accordance with this section may be considered.

(b) Funds may not be used to finance:

(1) Facilities which are not modest in size, design, and cost.

(2) Loan finder's fees.

(3) Projects located within the Coastal Barriers Resource system that do not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, Pub. L. 97-348.

[52 FR 43726, Nov. 16, 1987, as amended at 57 FR 21195, May 19, 1992; 68 FR 65831, Nov. 24, 2003]

#### § 1942.113 Rates and terms.

Rates and terms for loans under this subpart are as set out in § 1942.17(f) of subpart A of this part 1942.

#### § 1942.114 Security.

Specific requirements for security for each loan will be included in the letter of conditions. Loans must be secured by the best security position practicable, in a manner which will adequately protect the interest of FmHA or its successor agency under Public Law 103-354 during the repayment period of the loan, and in accordance with the following:

(a) Security must include one of the following:

(1) A pledge of revenue and a lien on all real estate and major equipment purchased or developed with the FmHA or its successor agency under Public Law 103-354 loan; or

(2) General obligation bonds or bonds pledging other taxes.

(b) Additional security may be required as determined necessary by the loan approval official. In determining the need for additional security the loan approval official should carefully consider:

(1) The estimated market value of real estate and equipment security.

(2) The adequacy and dependability of the applicant's revenues, based on the applicant's financial records, the project financial feasibility report, and the project budgets.

(3) The degree of community commitment to the project, as evidenced by items such as active broad based membership, aggressive leadership, broad based fund drives, or contributions by local public bodies.

(c) Additional security may include, but is not limited to, the following:

(1) Liens on additional real estate or equipment.

(2) A pledge of revenues from additional sources.

(3) An assignment of assured income in accordance with § 1942.17(g)(3)(iii)(A)(I) of subpart A of this part 1942.

(d) Review and approval or concurrence in the State Office is required if the security will not include a pledge of taxes and the applicant cannot provide evidence of the financially successful operation of a similar facility for the 5 years immediately prior to loan application.

(e) Review and concurrence in the National Office is required if the security will not include a pledge of taxes, the applicant cannot provide evidence of the financially successful operation of a similar facility for the 5 years immediately prior to loan application, and the amount of the loan will exceed \$250,000.

(f) Loans under this subpart are subject to the provisions of § 1942.17(g)(1) of subpart A of this part 1942, regarding

## § 1942.115

security for projects utilizing joint financing.

[52 FR 43726, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987]

### § 1942.115 Reasonable project costs.

Applicants are responsible for determining that prices paid for property rights, construction, equipment, and other project development are reasonable and fair. FmHA or its successor agency under Public Law 103-354 may require an appraisal by an independent appraiser or FmHA or its successor agency under Public Law 103-354 employee.

### § 1942.116 Economic feasibility requirements.

All projects financed under this section must be based on taxes, assessments, revenues, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the FmHA or its successor agency under Public Law 103-354 staff and approval official. All applicants will be expected to provide a financial feasibility report. These financial feasibility reports will normally be:

(a) Included as part of the preliminary engineer/architectural report using guide 6 to subpart A of this part 1942 (available in any FmHA or its successor agency under Public Law 103-354 Office), or

(b) Prepared by the applicant using Form FmHA or its successor agency under Public Law 103-354 1942-54, "Applicant's Feasibility Report."

### § 1942.117 General requirements.

(a) *Reserve requirements.* Loans under this subpart are subject to the provisions of § 1942.17 (i) of subpart A of this part 1942.

(b) *Membership authorization.* The membership of organizations other than public bodies must authorize the project and its financing except the District Director may, with the concurrence of the State Director (with advice of OGC as needed), accept the

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loan resolution without such membership authorization when State statutes and the organization charter and by-laws do not require such authorization.

(c) *Insurance and bonding.* Loans under this subpart are subject to the provisions of § 1942.17(j)(3) of subpart A of this part 1942.

(d) *Acquisition of land and rights.* Loans under this subpart are subject to the provisions of § 1942.17(j)(4) of subpart A of this part 1942.

(e) *Lease agreements.* Loans under this subpart are subject to the provisions of § 1942.17(j)(5) of subpart A of this part 1942.

(f) *Notes and bonds.* Loans under this subpart are subject to the provisions of §§ 1942.17(j)(6) and 1942.19 of subpart A of this part 1942.

(g) *Public information.* Loans under this subpart are subject to the provisions of § 1942.17 (j)(9) of subpart A of this part 1942.

(h) *Joint funding.* Loans under this subpart are subject to the provisions of §§ 1942.2 (e) and 1942.17 (j)(11) of subpart A of this part 1942.

### § 1942.118 Other Federal, State, and local requirements.

(a) Loans under this subpart are subject to the provisions of § 1942.17 (k) of subpart A of this part 1942.

(b) An initial compliance review should be completed under subpart E of part 1901 of this chapter.

### § 1942.119 Professional services and borrower contracts.

(a) Loans under this subpart are subject to the provisions of § 1942.17 (l) of subpart A of this part 1942.

(b) The District Director will, with assistance as necessary by the State Director and OGC, concur in agreements between borrowers and third parties such as contracts for professional and technical services. The State Director may require State Office review of such documents in accordance with § 1942.108 (g) of this subpart. State Directors are expected to work closely with representatives of engineering and architectural societies, bar associations, commercial lenders, accountant associations, and others in developing standard forms of agreements, where needed, and other

matters to expedite application processing, minimize referrals to OGC, and resolve problems which may arise. Standard forms should be reviewed by and approved by OGC.

**§§ 1942.120–1942.121 [Reserved]**

**§ 1942.122 Actions prior to loan closing and start of construction.**

(a) *Excess FmHA or its successor agency under Public Law 103–354 loan funds.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(1) of subpart A of this part 1942.

(b) *Loan resolutions.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(2) of subpart A of this part 1942.

(c) *Interim financing.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(3) of subpart A of this part 1942.

(d) *Applicant contribution.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(5) of subpart A of this part 1942 this chapter.

(e) *Evidence of and disbursement of other funds.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(6) of subpart A of this part 1942.

(f) *Assurance agreement.* All applicants must execute Form FmHA or its successor agency under Public Law 103–354 400–4, “Assurance Agreement,” at or before loan closing.

**§ 1942.123 Loan closing.**

(a) *Ordering loan checks.* Checks will not be ordered until:

(1) Form FmHA or its successor agency under Public Law 103–354 440–57, “Acknowledgement of Obligated Funds/Check Request,” has been received from the Finance Office.

(2) The applicant has complied with approval conditions and any closing instructions, except for those actions which are to be completed on the date of loan closing or subsequent thereto.

(3) The applicant is ready to start construction or funds are needed to pay interim financing obligations.

(b) *Public bodies and Indian tribes.* (1) After loan approval the completed docket will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with a request for closing instructions. Upon

receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(2) Loans will be closed in accordance with the closing instructions issued by OGC and § 1942.19 of subpart A of this part 1942.

(c) *Organizations other than public bodies and Indian tribes.* District Directors are authorized to close loans to organizations other than public bodies and Indian tribes without closing instructions from OGC. State Directors, in consultation with OGC, should develop standard closing procedures and forms as needed. Assistance with loan closing and a certification regarding the validity of the note and mortgage or other debt instruments should be provided by the applicant's attorney. Appropriate title opinion or title insurance is required as provided in § 1942.17 (j)(4)(i)(B) of subpart A of this part 1942.

(d) *Authority to execute, file, and record legal instruments.* District Office employees are authorized to execute and file or record any legal instruments necessary to obtain or preserve security for loans. This includes, as appropriate, mortgages and other lien instruments, as well as affidavits, acknowledgements, and other certificates.

(e) *Mortgages.* Unless otherwise required by State law or unless an exception is approved by the State Director with advice of the OGC, only one mortgage will be taken even though the indebtedness is to be evidenced by more than one instrument. The real estate or chattel mortgages or security instruments will be delivered to the recording office for recordation or filing, as appropriate. A copy of such instruments will be delivered to the borrower. The original instrument, if returnable after recording or filing, will be retained in the borrower's case folder.

(f) *Notes and bonds.* When the debt instrument is a note or single instrument bond fully registered as to principal and interest a conformed copy will be sent to the Finance Office immediately after loan closing and the original instrument will be stored in the District Office. When other types of bonds are used, the original bond(s) will be forwarded to the Finance Office immediately after loan closing.

(g) *Disposition of title evidence.* All title evidence other than the opinion of title and mortgage title insurance policy, will be returned to the borrower when the loan has been closed.

(h) *Multiple advances.* When temporary paper, such as bond anticipation notes or interim receipts, is used to conform with the multiple advance requirement, the original temporary paper will be forwarded to the Finance Office after each advance is made to the borrower. The borrower's case number will be entered in the upper right-hand corner of such paper by the District Office. The permanent debt instrument(s) should be forwarded to the Finance Office as soon as possible after the last advance is made, except that for notes and single instrument bonds fully registered as to principal and interest the original will be retained in the District Office and a copy will be forwarded to the Finance Office. The following actions will be taken prior to issuance of the permanent instruments:

(1) The Finance Office will be notified of the anticipated date for the retirement of the interim instruments and the issuance of permanent instruments of debt.

(2) The Office of the Deputy Chief Financial Officer will prepare a statement of account including accrued interest through the proposed date of retirement and also show the daily interest accrual. The statement of account and the interim financing instruments will be forwarded to the Rural Development Manager.

(3) The Rural Development Manager will collect interest through the actual date of the retirement and obtain the permanent instrument(s) of debt in exchange for the interim financing instruments. The permanent instruments and the cash collection will be for-

warded to the Office of the Deputy Chief Financial Officer immediately, except that for notes and single instrument bonds fully registered as to principal and interest the original will be retained in the Area Office and a copy will be forwarded to the Office of the Deputy Chief Financial Officer. In developing the permanent instruments, the sequence of preference set out § 1942.19(e) of Subpart A of Part 1942 of this chapter will be followed.

(i) *Bond registration record.* Form FmHA or its successor agency under Public Law 103-354 442-28, "Bond Registration Book," may be used as a guide to assist borrowers in the preparation of a bond registration book in those cases where a registration book is required and a book is not provided in connection with the printing of the bonds.

(j) *Loan disbursements.* Whenever a loan disbursement is received, lost, or destroyed, the Rural Development Manager will take the appropriate actions outlined in Rural Development Instruction 2018-D.

(k) *Safeguarding bond shipments.* FmHA or its successor agency under Public Law 103-354 personnel will follow the procedures for safeguarding mailings and deliveries of bonds and coupons outlined in FmHA Instruction 2018-E (available in any FmHA or its successor agency under Public Law 103-354 office), whenever they mail or deliver these items.

(l) *Review of loan closing.* When the loan has been closed, the Rural Development Manager will submit the completed loan closing documents and a statement showing what was done in closing the loan to the State Director. The State Director will review the documents and the Rural Development Manager's statement to determine whether the transaction was closed properly. For loans to public bodies or Indian tribes the State Director will forward all documents, along with a statement that all administrative requirements have been met, to the Regional Attorney. The Regional Attorney will review the submitted material to determine whether all legal requirements have been met. The Regional Attorney should review Rural Development standard forms only for proper

execution, unless the State Director brings attention to specific questions. Facility development should not be held up pending receipt of the Regional Attorney opinion. When the review of the State Director has been completed, and for public bodies and Indian tribes the Regional Attorney's opinion has been received, the State Director must advise the Rural Development Manager of any deficiencies that must be corrected and return all material that was submitted for review.

(m) *Loan cancellation.* Loans under this subpart are subject to the provisions of §1942.12 of subpart A of this part 1942.

[52 FR 43726, Nov. 16, 1987, as amended at 59 FR 54788, Nov. 2, 1994; 70 FR 19254, Apr. 13, 2005]

#### §§ 1942.124–1942.125 [Reserved]

#### § 1942.126 Planning, bidding, contracting, constructing, procuring.

(a) *General.* This section provides procedures and requirements for planning, bidding, contracting, constructing and procuring facilities financed under this subpart. These procedures do not relieve the owner of contractual obligations that arise from procurement of services.

(b) *Technical services.* Owners are responsible for providing the engineering or architectural services necessary for planning, designing, bidding, contracting, inspecting and constructing their facilities. Services may be provided by the owner's "in-house" engineer or architect or through contract, subject to FmHA or its successor agency under Public Law 103–354 concurrence. Architects and engineers must be licensed in the State where the facility is to be located.

(1) *Preliminary reports.* A preliminary architectural or engineering report conforming with customary professional standards is required for all construction, except that FmHA or its successor agency under Public Law 103–354 may waive the requirement for a preliminary architectural/engineering report or accept a brief report if the cost of the construction does not exceed \$100,000. Guide 6 to subpart A of this part 1942 (available in any FmHA

or its successor agency under Public Law 103–354 office) may be used.

(2) *Final reports.* Detailed final plans and specifications are required for all construction and must receive FmHA or its successor agency under Public Law 103–354 concurrence. When negotiated procurement is used for construction costing not more than \$100,000 the final plans and specifications may be provided by the contractor who submits the successful proposal. The plans and specifications must be prepared by or under the supervision of an architect or engineer who is licensed in the State where the facility is to be located and should include all materials and work to be provided under the contract. Some work and material may be omitted from the contract provided the owner furnishes detailed cost estimates for whatever is needed to fully complete the facility and will complete the facility in accordance with paragraph (e) of this section and the small purchase procedures set out in §1942.18(k)(1) of subpart A of this part 1942. In such cases, FmHA or its successor agency under Public Law 103–354 may determine that it is not necessary to require the applicant to hire a consulting architect/engineer; however, if a second contract that does not qualify for small purchase procedures is needed to complete the facility, the owner must provide for an architect/engineer to design the entire facility. When the contractor provides the plans and specifications, the contract will be considered a design/build procurement method under §1942.18(1) of subpart A of this part 1942.

(3) *Major equipment.* An architect/engineer is not required for major equipment if FmHA or its successor agency under Public Law 103–354 determines the owner has the ability to develop an adequate request for proposal and evaluate the proposals received or can obtain adequate assistance from other sources, such as State or Federal agencies or trade associations.

(c) *Design policies.* Facilities financed by FmHA or its successor agency under Public Law 103–354 must be designed and constructed in accordance with sound engineering and architectural

practices, and must meet the requirements of Federal, State and local agencies. All facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with the Architectural Barriers Act of 1968 (Pub. L. 90–480) as implemented by the General Services Administration regulations 41 CFR 101–19.6 and section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112) as implemented by 7 CFR parts 15 and 15b.

(d) *Construction contracts.* Contract documents must be sufficiently descriptive and legally binding to accomplish the work as economically and expeditiously as possible.

(1) *Standard construction contract documents.* When standard construction contract documents available from FmHA or its successor agency under Public Law 103–354 are used, or when the amount of the contract does not exceed \$100,000, it will normally not be necessary for the Regional Attorney to perform a detailed legal review. If construction contract documents used are not in the format of guide forms approved by FmHA or its successor agency under Public Law 103–354, and the contract amount exceeds \$100,000, the Regional Attorney must review the documents before their use.

(2) *Contract review and approval.* The owner's attorney will review executed contract documents, including performance and payment bonds, and certify that they are adequate, legal and binding, and that the persons executing the documents have been authorized to do so. The contract documents, bid bonds, and bid tabulation sheets will be forwarded to FmHA or its successor agency under Public Law 103–354 for approval prior to awarding. All contracts will contain a provision that they are not in full force and effect until they have been approved by FmHA or its successor agency under Public Law 103–354. The FmHA or its successor agency under Public Law 103–354 District Director is responsible for approving construction contracts with advice and guidance of the State Director and Regional Attorney when necessary.

(3) *Separate contracts.* Arrangements which split responsibility of contractors (separate contracts for labor and

material, extensive subcontracting and multiplicity of small contracts on the same job) should be avoided whenever it is practical to do so. Contracts may be awarded to suppliers or manufacturers for furnishing and installing certain items which have been designed by the manufacturer and delivered to the job site in a finished or semifinished state such as prefabricated buildings. Contracts may also be awarded for material delivered to the job site and installed by a patented process or method.

(e) *Performing construction.* Owners are encouraged to accomplish construction through contracts with recognized contractors. Owners may accomplish construction by using their own personnel and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer or architect prepares design drawings and specifications and inspection is provided in accordance with paragraph (1)(3) of this section.

(f) *Owner's contractual responsibility.* Loans under this subpart are subject to the provisions of §1942.18(i) of subpart A of this part 1942.

(g) *Owner's procurement regulations.* Loans under this subpart are subject to the provisions of §1942.18(j) of subpart A of this part 1942.

(h) *Procurement methods.* Unless the FmHA or its successor agency under Public Law 103–354 National Office gives prior written approval of another method, procurement must be made by one of the following methods:

(1) Small purchase procedures as provided in §1942.18(k)(1) of subpart A of this part 1942.

(2) Competitive sealed bids as provided in §1942.18(k)(2) of subpart A of this part 1942. Competitive sealed bids is the preferred procurement method of construction projects, except for buildings costing \$100,000 or less when the owner desires to use a “preengineered” or “packaged” building.

(3) Competitive negotiation as provided in §1942.18(k)(3) of subpart A of this part 1942. Competitive negotiation is the preferred procurement method of buildings not exceeding \$100,000 in cost when the owner desires to use a “pre-

engineered” or “packaged” building and for major equipment.

(4) Noncompetitive negotiation as provided in §1942.18(k)(4) of subpart A of this part 1942.

(i) *Contracting methods.* Loans under this subpart are subject to the provisions of §1942.18(1) of subpart A of this part 1942.

(j) *Contracts awarded prior to preapplications.* Loans under this subpart are subject to the provisions of §1942.18(m) of subpart A of this part 1942.

(k) *Construction contract provisions.* Construction contracts for loans under this subpart are subject to the provisions of §1942.18(n) of subpart A of this part 1942. Construction contracts for loans under this subpart are also subject to the provisions of §1901.205 of subpart E of part 1901 of this chapter, regarding nondiscrimination in construction, except that guides 18 and 17 or 19 to subpart A of this part 1942 of this chapter will normally be used instead of Form FmHA or its successor agency under Public Law 103-354 1924-5, “Invitation for Bid (Construction Contract),” and Form FmHA or its successor agency under Public Law 103-354 1924-6, “Construction Contract.” When guide 18 is used with a design/build type contract, section 4, “Conflict of Interest,” may need revision.

(l) *Construction contract administration.* Owners shall be responsible for maintaining a contract administration system to monitor the contractors’ performance and compliance with the terms, conditions, and specifications of the contracts.

(1) *Preconstruction conference.* Prior to beginning construction the owner will schedule a preconstruction conference where FmHA or its successor agency under Public Law 103-354 will review the planned development with the owner, its architect or engineer, project inspector, attorney, contractor(s), and other interested parties. The conference will thoroughly cover applicable items included in Form FmHA or its successor agency under Public Law 103-354 1924-16, “Record of Preconstruction Conference,” and the discussions and agreements will be documented. Form FmHA or its successor

agency under Public Law 103-354 1924-16 may be used for this purpose.

(2) *Monitoring reports.* Each owner will be required to monitor and provide reports to FmHA or its successor agency under Public Law 103-354 on actual performance during construction for each project financed, or to be financed, in whole or in part with FmHA or its successor agency under Public Law 103-354 funds. The reports are to include:

(i) A comparison of actual accomplishments with the construction schedule established for the period. The partial payment estimate may be used for this purpose.

(ii) A narrative statement giving full explanation of the following:

(A) Reasons why established goals were not met.

(B) Analysis and explanation of cost overruns or high unit costs and how payment is to be made for the same.

(iii) If events occur between reports which have a significant impact upon the project, the owner will notify FmHA or its successor agency under Public Law 103-354 as soon as any of the following conditions are known:

(A) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives or prevent the meeting of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(B) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected or which will result in cost underruns or lower unit costs than originally planned and which may result in less FmHA or its successor agency under Public Law 103-354 assistance.

(3) *Inspection.* The borrower must provide for inspection of all construction. When the borrower enters into an agreement for technical services with an engineer/architect, the agreement should provide for general engineering/architectural inspection of the construction work. When no such agreement exists, or FmHA or its successor agency under Public Law 103-354 or the

borrower determines the inspection services of the engineer/architect may not be sufficient, the owner must provide a project inspector. Prior to the preconstruction conference, the borrower must submit a résumé of qualifications of the project inspector to FmHA or its successor agency under Public Law 103-354 for acceptance in writing. The project inspector will be responsible for making inspections necessary to protect the borrower's interest and for providing written inspection reports to the borrower with copies to the FmHA or its successor agency under Public Law 103-354 District Director. guide 11 of subpart A of this part 1942 (available in any FmHA or its successor agency under Public Law 103-354 office) may be used as a guide format for inspection reports. For new buildings, additions to existing buildings, and rehabilitation of existing buildings, the project inspector should make inspections at the following stages of construction and at other stages of construction as determined by the District Director and the borrower. Inspections by FmHA or its successor agency under Public Law 103-354 are solely for its benefit as lender.

(i) An initial inspection should be made just prior to or during the placement of concrete footings or monolithic footings and floor slabs. At this point, foundation excavations are complete, forms or trenches and steel are ready for concrete placement and the subsurface installation is roughed in. If the building design does not include concrete footings the initial inspection should be made just after or during the placement of poles or other foundation materials.

(ii) An inspection should be made when the building is enclosed, structural members are still exposed, roughing in for heating, plumbing and electrical work is in place and visible, and wall insulation and vapor barriers are installed.

(iii) A final inspection should be made when all development of the structure has been completed and the structure is ready for its intended use.

(4) *Prefinal inspections.* A prefinal inspection will be made by the owner, project inspector, owner's architect or engineer, representatives of other

agencies involved, and the District Director. The inspection results will be recorded on Form FmHA or its successor agency under Public Law 103-354 1924-12, "Inspection Report," and a copy provided to all interested parties, including the FmHA or its successor agency under Public Law 103-354 State Director.

(5) *Final inspection.* A final inspection will be made by FmHA or its successor agency under Public Law 103-354 before final payment is made.

(6) *Changes in development plans.* (i) Changes in development plans may be approved by FmHA or its successor agency under Public Law 103-354 when requested by owners, provided:

(A) Funds are available to cover any additional costs; and

(B) The change is for an authorized loan purpose; and

(C) It will not adversely affect the soundness of the facility operation or FmHA or its successor agency under Public Law 103-354's security; and

(D) The change is within the scope of the contract; and

(E) Any applicable requirements of subpart G of part 1940 of this chapter have been met.

(ii) Changes will be recorded on Form FmHA or its successor agency under Public Law 103-354 1924-7, "Contract Change Order," or other similar forms may be used with the prior approval of the District Director. Regardless of the form, change orders must be approved by the FmHA or its successor agency under Public Law 103-354 District Director.

(iii) Changes should be accomplished only after FmHA or its successor agency under Public Law 103-354 approval on all changes which affect the work and shall be authorized only by means of contract change order. The change order will include items such as:

(A) Any changes in labor and material and their respective cost.

(B) Changes in facility design.

(C) Any decrease or increase in quantities based on final measurements that are different from those shown in the bidding schedule.

(D) Any increase or decrease in the time to complete the project.

(iv) All changes shall be recorded on chronologically numbered contract

change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.

[52 FR 43726, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987]

**§ 1942.127 Project monitoring and fund delivery.**

(a) *Coordination of funding sources.* When a project is jointly financed, the District Director will reach any needed agreement or understanding with the representatives of the other source of funds on distribution of responsibilities for handling various aspects of the project. These responsibilities will include supervision of construction, inspections and determination of compliance with appropriate regulations concerning equal employment opportunities, wage rates, nondiscrimination in making services or benefits available, and environmental compliance. If any problems develop which cannot be resolved locally, complete information should be sent to the State Office for advice.

(b) *Multiple advances.* Loans under this subpart are subject to the provisions of § 1942.17 (p)(2) of subpart A of this part 1942.

(c) *Use and accountability of funds.* Loans under this subpart are subject to the provisions of § 1942.17 (p)(3) of subpart A of this part 1942.

(d) *Development inspections.* Loans under this subpart are subject to the provisions of § 1942.17(p)(4) of subpart A of this part 1942.

(e) *Payment for project costs.* Each payment for project costs must be approved by the borrower's governing body.

(1) *Construction.* Payment for construction must be for amounts shown on payment estimate forms. Form FmHA or its successor agency under Public Law 103-354 1924-18, "Partial Payment Estimate," may be used for this purpose or other similar forms may be used with the prior approval of the District Director. However, the District Director cannot require more reporting burden than is required by Form FmHA or its successor agency under Public Law 103-354 1924-18. Advances for contract retainage will not be made until such retainage is due and payable under the terms of the con-

tract. The review and acceptance of project cost, including construction partial payment estimates, by FmHA or its successor agency under Public Law 103-354 does not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts.

(2) *Major equipment.* Payment for major equipment should generally coincide with delivery of the usable equipment, along with any necessary title or certifications, to the borrower. Borrowers may not use FmHA or its successor agency under Public Law 103-354 loan funds to make deposits on equipment not ready for delivery. If a borrower purchases a truck chassis from one supplier and another supplier will complete the development of a fire or rescue vehicle, FmHA or its successor agency under Public Law 103-354 may release funds to pay for the chassis when title to the chassis is transferred to the borrower.

(f) *Use of remaining funds.* Loans under this subpart are subject to the provisions of § 1942.17 (p)(6) of subpart A of this part 1942.

[52 FR 43726, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987]

**§ 1942.128 Borrower accounting methods, management reports and audits.**

(a) Loans under this subpart are subject to the provisions of § 1942.17(q) of subpart A of this part 1942 except as provided in this section.

(b) Borrowers with annual incomes not exceeding \$100,000 may, with concurrence of the District Director, use Form FmHA or its successor agency under Public Law 103-354 1942-53, "Cash Flow Report," instead of page one of schedule one and schedule two of Form FmHA or its successor agency under Public Law 103-354 442-2, "Statement of Budget, Income, and Equity." When used for budgeting, the cash statement should be projected for the upcoming fiscal year. When used for quarterly or annual reports, the cash flow report should include current year projections and actual data for the prior year, the quarter just ended, and the current year to date.

## **§ 1942.129**

### **§ 1942.129 Borrower supervision and servicing.**

Loans under this subpart are subject to the provisions of §1942.17(r) of subpart A of this part 1942 and subpart E of part 1951 of this chapter.

### **§§ 1942.130–1942.131 [Reserved]**

### **§ 1942.132 Subsequent loans.**

Subsequent loans will be processed under this subpart.

### **§ 1942.133 Delegation and redelegation of authority.**

Loan approval authority is in subpart A of part 1901 of this chapter. State Directors may delegate approval authority to District Directors to approve fire and rescue loans regardless of whether authority to approve other community facility loans is delegated. Except for loan approval authority, District Directors may redelegate their duties to qualified staff members.

### **§ 1942.134 State supplements and guides.**

State Directors will obtain National Office clearance for all State supplements and guides under FmHA Instruction 2006-B (available in any FmHA or its successor agency under Public Law 103-354 Office).

(a) *State supplements.* State Directors may supplement this subpart to meet State and local laws and regulations and to provide for orderly application processing and efficient service to applicants. State supplements shall not contain any requirements pertaining to bids, contract awards, and materials more restrictive than those in this subpart.

(b) *State guides.* State Directors may develop guides for use by applicants if the guides to this subpart and subpart A of part 1942 are not adequate. State Directors may prepare guides for items needed for the application; items necessary for the docket; and items required prior to loan closing or construction starts.

### **§§ 1942.135–1942.149 [Reserved]**

### **§ 1942.150 OMB control number.**

The collection of information requirements in this regulation have

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been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0120.

## **Subparts D–F [Reserved]**

## **Subpart G—Rural Business Enterprise Grants and Television Demonstration Grants**

**AUTHORITY:** 7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; 5 U.S.C. 301.

**SOURCE:** 45 FR 73637, Nov. 6, 1980, unless otherwise noted.

### **§ 1942.301 Purpose.**

This subpart outlines Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 policies and authorizations and sets forth procedures for making grants to finance and facilitate development of private business enterprises. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA or its successor agency under Public Law 103-354 employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA or its successor agency under Public Law 103-354 employee.

[53 FR 30247, Aug. 11, 1988, as amended at 58 FR 226, Jan. 5, 1993]

### **§ 1942.302 Policy.**

(a) The grant program will be used to support the development of small and emerging private business enterprises in rural areas.

(b) FmHA or its successor agency under Public Law 103-354 officials will maintain liaison with officials of other federal, state, regional and local development agencies to coordinate related programs to achieve rural development objectives.

(c) FmHA or its successor agency under Public Law 103-354 officials shall cooperate with appropriate State agencies in making grants that support

State strategies for rural area development.

(d) Funds allocated for use in accordance with this subpart are also to be considered for use of Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity along with other rural residents to participate in the benefits of these programs. This includes equal application of outreach activities of FmHA or its successor agency under Public Law 103-354 County and District Offices.

[53 FR 30247, Aug. 11, 1988]

#### **§ 1942.303 Authorities, delegation, and redelegation.**

The State Director is responsible for implementing the authorities contained in this subpart and to issue State supplements redelegating these authorities to appropriate FmHA or its successor agency under Public Law 103-354 employees. Grant approval authorities are contained in subpart A of part 1901 of this chapter.

#### **§ 1942.304 Definitions.**

*Project.* For rural business enterprise grants, the result of the use of program funds, *i.e.*, a facility whether constructed by the applicant or a third party from a loan made with grant funds, technical assistance, startup operating costs, or working capital. A revolving fund established in whole or in part with grant funds will also be considered a project for the purpose of Intergovernmental and Environmental Review under § 1942.310 (b) and (c), of this subpart as well as the specific uses of the revolving funds. For television demonstration grants, television programming developed on issues of importance to farmers and rural residents.

*Regional Commission grants.* Grants made from funds made available to FmHA or its successor agency under Public Law 103-354 by the Appalachian Regional Commission (ARC) or other Federal Regional Commissions designated under title V of the Public Works and Economic Development Act of 1965.

*Rural and Rural Area.* Any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town according to the latest decennial census of the United States.

*Rural Business Enterprise (RBE) grants.* Grants made to finance and facilitate development of small and emerging private business enterprises in rural areas. Grants are made from FmHA or its successor agency under Public Law 103-354 funds under authority of the Consolidated Farm and Rural Development Act, as amended, sec. 310B(c) (7 U.S.C. 1932).

*Small and emerging private business enterprise.* Any private business which will employ 50 or fewer new employees and has less than \$1 million in projected gross revenues.

*Technical Assistance.* A function performed for the benefit of a private business enterprise and which is a problem solving activity, such as market research, product and/or service improvement, feasibility study, etc.

*Television demonstration program.* Grants made for television programming developed to demonstrate the effectiveness of providing information on agriculture and other issues of importance to farmers and other rural residents. Grants are made from FmHA or its successor agency under Public Law 103-354 funds under authority of the Consolidated Farm and Rural Development Act, as amended, sec. 310B(j) (7 U.S.C. 1932).

[57 FR 33099, July 27, 1992, as amended at 66 FR 27014, May 16, 2001; 67 FR 77908, Dec. 20, 2002]

#### **§ 1942.305 Eligibility and priority.**

(a) *Eligibility.* (1) RBE grants may be made to public bodies and private non-profit corporations serving rural areas. Public bodies include States, counties, cities, townships, and incorporated town and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations and other Federally recognized Indian Tribal groups in rural areas.

(2) The end result of the project must finance or develop a small and emerging private business enterprise. The small business receiving assistance

must meet the definition contained in § 1942.304. However, if the small and emerging private business enterprise is an eligible nonprofit entity or other tax-exempt organization located in a city, town or unincorporated area with a population of 5,000 or less and has a principal office on land of an existing or former Native American reservation, the small and emerging private business enterprise is exempt from meeting the definition contained in § 1942.304.

(3) Regional Commission Grant applicants must meet eligibility requirements of the Regional Commission and also of the Agency, in accordance with paragraph (a)(1) of this section, for the Agency to administer the Regional Commission Grant under this subpart.

(4) Television demonstration grants may be made to statewide, private, nonprofit, public television systems whose coverage is predominantly rural. An eligible applicant must be organized as a private, nonprofit, public television system, licensed by the Federal Communications Commission, and operated statewide and within a coverage area that is predominantly rural.

(b) *Project selection process.* The following paragraphs indicate items and conditions which must be considered in selecting RBE applications for further development. When ranking eligible RBE applications for consideration for limited funds, FmHA or its successor agency under Public Law 103-354 officials must consider the priority items met by each RBE application and the degree to which those priorities are met, and apply good judgment. Due to the small number of applicants eligible for television demonstration grants, such applicants will not compete for priority points against RBE applicants.

(1) *Applications.* The application and supporting information submitted with it will be considered in determining the proposed project's priority for available funds.

(2) *State Office review.* All applications will be reviewed and scored for funding priority. Eligible applicants that cannot be funded should be advised by the State Director that funds are not available, and requested to advise whether they wish to have their

application maintained in an active file for future consideration.

(3) *Selection priorities.* The priorities described below will be used by the State Director to rate applications. Points will be distributed as indicated in paragraphs (b)(3) (i) through (iv) of this section. A copy of the score sheet should be placed in the case file for future reference.

(i) *Population.* Proposed project(s) will primarily be located in a community of (1) between 15,000 and 25,000 population—5 points, (2) between 5,000 and 15,000 population—10 points, (3) under 5,000 population—15 points.

(ii) *Economic conditions.* (A) Proposed project(s) will primarily be located in areas where the unemployment rate (1) exceeds the State rate by 25% or more—20 points, (2) exceeds the State rate by less than 25%—10 points, (3) is equal to or less than the State rate—0 points.

(B) Proposed project(s) will primarily be located in areas where Median Household Income (MHI) as prescribed by section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) for a family of 4 for the State is: (1) Less than poverty line—25 points, (2) more than poverty line but less than 85% of State MHI—15 points, (3) between 85% and 100% of State MHI—10 points, (4) equal or greater than State MHI—0 points.

(iii) *Experience.* Applicant has evidence of at least 5 years of successful experience in the type of activity proposed in the application for funds under this subpart. Evidence of successful experience may be (1) a description of experience supplied and certified by the applicant, or (2) a letter of support from appropriate local elected officials explaining the applicant's experience. Experience—10 points

(iv) *Other.* (A) Applicant has evidence that small business development will occur by startup or expansion as a result of the activities to be carried out under the grant. Written evidence of commitment by small business must be provided to FmHA or its successor agency under Public Law 103-354—25 points.

(B) Applicant has evidence of substantial commitment of funds from nonfederal sources for proposed

project. An authorized representative of the source organization of the non-federal funds must provide evidence that the funds are available and will be used for the proposed project. More than 50 percent of the project costs from nonfederal sources—15 points; more than 25 percent, but less than 50 percent of project costs from non-federal sources—10 points; between 5 percent and 25 percent of project costs from nonfederal sources—5 points.

(C) For a grant to establish a revolving fund, the applicant provides evidence to FmHA or its successor agency under Public Law 103-354 through loan applications or letters from businesses that the loans are needed by small emerging businesses in the proposed project area—25 points.

(D) The anticipated development, expansion, or furtherance of business enterprises as a result of the proposed project will create and/or save jobs associated with the affected businesses. The number of jobs must be evidenced by a written commitment from the business to be assisted. One job per each \$10,000 or less in grant funds expended—10 points. One job per each \$25,000 to \$10,000 in grant funds expended—5 points.

(E) The proposed grant project is consistent with, and does not duplicate, economic development activities for the project area under an existing community or economic development plan covering the project area. If no local plan is in existence for the project area, an areawide plan may be used. The plan used must be adopted by the appropriate governmental officials/entities as the area's community or economic development plan. Appropriate plan references and copies of appropriate sections of the plan, as well as evidence of plan adoption by appropriate governmental officials, should be provided to FmHA or its successor agency under Public Law 103-354. Project is reflected in a plan—5 points.

(F) Grant projects utilizing funds available under this subpart of less than \$100,000—25 points, \$100,000 to \$200,000—15 points, more than \$200,000 but not more than \$500,000—10 points.

(G) The project will assist a small and emerging private business enter-

prise as described in § 1942.305 (a)(2) of this subpart—10 points.

(v) *Discretionary.* In certain cases, when a grant is an initial grant for funding under this subpart and is not more than \$500,000, FmHA or its successor agency under Public Law 103-354 may assign up to 50 points in addition to those that may be assigned in paragraphs (b)(3)(i) through (iv) of this section. Use of these points must include a written justification, such as geographic distribution of funds, criteria which will result in substantial employment improvement, mitigation of economic distress of a community through the creation or saving of jobs, or emergency situations. For grants of less than \$100,000—50 points; \$100,000 to \$200,000—30 points; more than \$200,000, but not more than \$500,000—20 points.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 30247, Aug. 11, 1988; 55 FR 134, Jan. 3, 1990; 57 FR 33099, July 27, 1992; 57 FR 35627, Aug. 10, 1992; 67 FR 77908, Dec. 20, 2002]

#### § 1942.306 Purposes of grants.

(a) Grant funds may be used to finance and/or develop small and emerging private business enterprises in rural areas including, but not limited to, the following:

(1) Acquisition and development of land, easements and rights-of-way.

(2) Construction, conversion, enlargement, repairs or modernization of buildings, plants, machinery, equipment, access streets and roads, parking areas, utilities, and pollution control and abatement facilities.

(3) Loans for startup operating cost and working capital.

(4) Technical assistance for private business enterprises.

(5) Reasonable fees and charges for professional services necessary for the planning and development of the project including packaging. Services must be provided by individuals licensed in accordance with appropriate State accreditation associations.

(6) Refinancing of debts exclusive of interest incurred by or on behalf of an association before an application for a grant when all of the following exist:

(i) The debts were incurred for the facility or part thereof or service to be installed or improved with the grant, and

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(ii) Arrangements cannot be made with the creditors to extend or modify the terms of the existing debt.

(7) Providing financial assistance to third parties through a loan.

(8) Training, when necessary, in connection with technical assistance.

(9) Production of television programs to provide information on issues of importance to farmers and rural residents.

(10) Create, expand, and operate rural distance learning networks or rural learning programs, that provide educational instruction or job training instruction related to potential employment or job advancement for adult students.

(b) Grants, except grants for television demonstration programs, may be made only when there is a reasonable prospect that they will result in development of small and emerging private business enterprises.

(c) FmHA or its successor agency under Public Law 103-354 grant funds may be used jointly with funds furnished by the grantee or from other sources including FmHA or its successor agency under Public Law 103-354 loan funds. Pursuant to Pub. L. 95-334, other departments, agencies, and executive establishments of the Federal Government may participate and provide financial and technical assistance jointly with FmHA or its successor agency under Public Law 103-354. The amount of participation by the other department, agency, or executive establishment shall only be limited by its authorities other than authorities which impose restrictions on joint financing.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 30248, Aug. 11, 1988; 57 FR 33100, July 27, 1992; 59 FR 26587, May 23, 1994]

### § 1942.307 Limitations on use of grant funds.

(a) Funds will not be used:

(1) To produce agriculture products through growing, cultivation and harvesting either directly or through horizontally integrated livestock operations except for commercial nurseries, timber operations or limited agricultural production related to technical assistance projects.

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(2) To finance comprehensive areawide type planning. This does not preclude the use of grant funds for planning for a given project.

(3) For loans by grantees when the rates, terms and charges for those loans are not reasonable or would be for purposes not eligible under § 1942.306 of this subpart.

(4) For programs operated by cable television systems.

(5) To fund a part of a project which is dependent on other funding unless there is a firm commitment of the other funding to ensure completion of the project.

(6) To pay for technical assistance as defined in this subpart which duplicates assistance provided to implement an action plan funded by the Forest Service (FS) under the National Forest-Dependent Rural Communities Economic Diversification Act for 5 continuous years from the date of grant approval by the FS. To avoid duplicate assistance, the grantee shall coordinate with FS and Rural Business-Cooperative Service (RBS) to ascertain if a grant has been made in a substantially similar geographical or defined local area in a State for technical assistance under the above program. The grantee will provide documentation to FS and RBS regarding the contact with each agency. Under its program, the FS assists rural communities dependent upon national forest resources by establishing rural forestry and economic diversification action teams which prepare action plans. Action plans are intended to provide opportunities to promote economic diversification and enhance local economies dependent upon national forest resources.

(b) At least 51 percent of the outstanding interest in the project has membership or is owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

[53 FR 30248, Aug. 11, 1988, as amended at 55 FR 135, Jan. 3, 1990; 57 FR 33100, July 27, 1992; 60 FR 52839, Oct. 11, 1995]

### § 1942.308 Regional Commission grants.

(a) Grants are sometimes made by Federal Regional Commissions for

projects eligible for FmHA or its successor agency under Public Law 103-354 assistance. FmHA or its successor agency under Public Law 103-354 has agreed to administer such funds in accordance with FmHA or its successor agency under Public Law 103-354 regulations and the requirements of the commission.

(b) The transfer of funds from a Regional Commission to FmHA or its successor agency under Public Law 103-354 will be based on specific applications determined to be eligible for an authorized purpose in accordance with the requirements of FmHA or its successor agency under Public Law 103-354 and the Regional Commission.

(c) ARC is authorized under the Appalachian Regional Development Act of 1965 (40 U.S.C. 1-405), as amended, to serve the Appalachian region. ARC grants are handled in accordance with the ARC Agreement which applies to all ARC grants administered by the Agency. Therefore, a separate Project Management Agreement between the Agency and ARC is not needed for each ARC grant.

(d) Other Federal Regional Commissions are those authorized under title V of the Public Works and Economic Development Act of 1965. Grants by these commissions are handled in accordance with a separate Project Management Agreement between the respective Regional Commission and FmHA or its successor agency under Public Law 103-354 for each Commission grant administered by FmHA or its successor agency under Public Law 103-354 (Guide 1 of this subpart). The agreement should be prepared by the FmHA or its successor agency under Public Law 103-354 State Director and the appropriate Commission official when the State Director receives a notice from the Commission of the amount of the grant to be made.

[45 FR 73637, Nov. 6, 1980, as amended at 62 FR 33510, June 19, 1997]

#### § 1942.309 [Reserved]

#### § 1942.310 Other considerations.

(a) Civil rights compliance requirements. All grants made under this subpart are subject to the requirements of title VI of the Civil Rights Act of 1964,

which prohibits discrimination on the bases of race, color, and national origin as outlined in subpart E of part 1901 of this chapter. In addition, the grants made under this subpart are subject to the requirements of section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap, the requirements of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age and title III of the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination on the basis of disability by private entities in places of public accommodations. When FmHA or its successor agency under Public Law 103-354 is administering a Federal Regional Commission grant and no FmHA or its successor agency under Public Law 103-354 RBE/television demonstration grant funds are involved, the Federal Regional Commission may make its own determination of compliance with the above Acts, unless FmHA or its successor agency under Public Law 103-354 is designated compliance review responsibilities. FmHA or its successor agency under Public Law 103-354 shall in all cases be made aware of any findings of discrimination or noncompliance with the requirements of the above Acts.

(b) *Environmental requirements*—(1) *General applicability*. Unless specifically modified by this section, the requirements of subpart G of part 1940 of this chapter apply to this subpart. FmHA or its successor agency under Public Law 103-354 will give particular emphasis to ensuring compliance with the environmental policies contained in §§1940.303 and 1940.304 in subpart G of part 1940 of this chapter. Although the purpose of the grant program established by this subpart is to improve business, industry and employment in rural areas, this purpose is to be achieved, to the extent practicable, without adversely affecting important environmental resources of rural areas such as important farmlands and forest lands, prime rangelands, wetlands and floodplains. Prospective recipients of grants, therefore, must consider the potential environmental impacts of their applications at the earliest planning stages and develop plans, grants

and projects that minimize the potential to adversely impact the environment.

(2) *Technical assistance.* The application for a technical assistance project is generally excluded from FmHA or its successor agency under Public Law 103–354’s environmental review process by § 1940.310(e)(1) of subpart G of part 1940 of this chapter. However, as further specified in § 1940.330 of subpart G of part 1940 of this chapter, the grantee for a technical assistance grant, in the process of providing technical assistance, must consider the potential environmental impacts of the recommendations provided to the recipient of the technical assistance.

(3) *Applications for Direct Construction Project.* The application by a potential grantee who intends to directly use grant funds for a nontechnical assistance project, such as a construction project, shall be reviewed and processed under the applicable requirements of subpart G of part 1940 of this chapter.

(4) *Applications for Grants to Provide Financial Assistance to Third Party Recipients.* As part of the preapplication, the applicant must provide a complete Form FmHA or its successor agency under Public Law 103–354 1940–20, “Request for Environmental Information,” for each project specifically identified in its plan to provide financial assistance to third parties who will undertake eligible projects with such assistance. FmHA or its successor agency under Public Law 103–354 will review the preapplication, supporting materials and any required Forms FmHA 1940–20 and initiate a Class II assessment for the preapplication. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because FmHA or its successor agency under Public Law 103–354’s approval of this type of grant application does not constitute FmHA or its successor agency under Public Law 103–354’s commitment to the use of grant funds for any identified third party projects (see § 1942.316 of this subpart), no public notification require-

ments for a Class II assessment will apply to the preapplication. After the grant is approved, each third party project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in subpart G of part 1940 of this chapter, prior to FmHA or its successor agency under Public Law 103–354 providing its consent to the grantee to assist the third party project. If the preapplication reflects only one specific project which is specifically identified as the third party recipient for financial assistance, FmHA or its successor agency under Public Law 103–354 may perform the appropriate environmental assessment in accordance with the requirements of subpart G of part 1940 of this chapter, and forego initiating a Class II assessment with no public notification. However, the applicant must be advised that if the recipient or project changes after the grant is approved, the project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in subpart G of part 1940 of this chapter.

(5) *Combined applications.* Whenever an applicant files a preapplication that includes a direct construction project and a plan to provide financial assistance to third parties who will undertake eligible projects, the following environmental requirements will apply.

(i) The proposed direct construction project(s) will be reviewed under the requirements of paragraph (b)(3) of this section prior to authorization of the application.

(ii) The plan to provide financial assistance to third parties will be reviewed and processed under the requirements of paragraph (b)(4) of this section. Additionally, the Class II assessment required for the plan shall address and analyze the cumulative impacts of all proposed projects, direct or third party, identified within the preapplication.

(c) *Excess capacity or transfer of employment.* (1) If a proposed grant is for more than \$1 million and will increase direct employment by more than 50 employees, the applicant will be requested to provide a written indication to FmHA or its successor agency under Public Law 103–354 which will enable

FmHA or its successor agency under Public Law 103-354 to determine that the proposal will not result in a project which is calculated to, or likely to, result in:

(i) The transfer of any employment or business activity from one area to another (this limitation shall not prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the expansion will not result in an increase in the unemployment in the area of original location or in any other area where such entity conducts business operations unless there is reason to believe that such expansion is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations), or

(ii) An increase in the production of goods, materials, or commodities or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities, to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area. The applicant's written indication will consist of a resolution from the applicant and Form FmHA or its successor agency under Public Law 103-354 449-22, "Certificate of Non-Relocation and Market and Capacity Information Report," from each existing and future occupant of the site. The applicant may use guide 2 of this subpart as an example in preparing the resolution. Future occupants of the site must be certified by Department of Labor (DOL) as outlined in paragraph (c)(3) of this section for a period of 3 years after the initial certification by DOL.

(2) The State Director will check each document for completeness and accuracy and, submit nine copies of each to the National Office for forwarding to DOL. The submittal to the National Office should be accompanied by a cover memorandum giving the amount and purpose of the grant. Information should *not* be submitted di-

rectly to DOL from the applicant or the State Office.

(3) Grants shall not be made if the Secretary of Labor certifies within 30 days after the matter has been submitted by the Secretary of Agriculture that the provisions of § 1942.310(c)(1) of this subpart have not been complied with. Information for obtaining this certification will be submitted in writing by the applicant to FmHA or its successor agency under Public Law 103-354. The information will be submitted to DOL by the FmHA or its successor agency under Public Law 103-354 National Office. Grant approval may be given and funds may be obligated subject to the DOL certification being received provided FmHA or its successor agency under Public Law 103-354 has made its own separate determinations of (c)(1)(i) and (ii) of this section when the project is in excess of \$1 million and affects over 50 employees.

(4) When a grant is being administered for a Federal Regional Commission and no FmHA or its successor agency under Public Law 103-354 grant funds are being used, the requirements for DOL determinations may be waived upon written request from the Commission. If the Commission so desires, the request will be included in the letter from the Commission to FmHA or its successor agency under Public Law 103-354 that gives notice of transfer of funds and conditions under which the funds are to be made available to the grantee. In such cases the letter of conditions from FmHA or its successor agency under Public Law 103-354 to the grantee will not include the requirement for DOL determinations.

(d) *Management assistance.* Grant recipients will be supervised as necessary to assure that projects are completed in accordance with approved plans and specifications and that funds are expended for approved purposes. Grants made under this subpart will be administered under and are subject to 7 CFR part 3015, 7 CFR part 3016, and 7 CFR part 3017, as appropriate, and established FmHA or its successor agency under Public Law 103-354 guidelines.

## § 1942.311

## 7 CFR Ch. XVIII (1–1–13 Edition)

(e) *National Historic Preservation Act of 1966*. All projects will be in compliance with the National Historic Preservation Act of 1966 in accordance with subpart F of part 1901 of this chapter.

(f) *Uniform Relocation and Real Property Acquisition Policies Act*. All projects must comply with the requirements set forth in title 7, subtitle A, part 21 of the Code of Federal Regulation.

(g) *Floodplains and wetlands*. All projects must comply with Executive Order 11988 “Floodplain Management” and Executive Order 119900 “Protection of Wetlands.”

(h) *Flood or mudslide hazard area precautions*. If the grantee financed project is in a flood or mudslide area, then flood or mudslide insurance must be provided.

(i) *Termination of Federal requirements*. Once the grantee has provided assistance to projects from a revolving fund, in an amount equal to the grant provided by FmHA or its successor agency under Public Law 103–354, the requirements imposed on the grantee shall not be applicable to any new projects thereafter financed from the revolving fund. Such new projects shall not be considered as being derived from Federal funds.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10, Pub. L. 93–357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70)

[45 FR 73637, Nov. 6, 1980, as amended at 47 FR 54423, Dec. 3, 1982; 49 FR 3760, Jan. 30, 1984; 53 FR 30248, Aug. 11, 1988; 55 FR 135, Jan. 3, 1990; 57 FR 33100, 33101, July 27, 1992]

### § 1942.311 Application processing.

(a) *Preapplications and applications*. (1) The application review and approval procedures outlined in §1942.2 of subpart A of part 1942 of this chapter will be followed as appropriate. The State Director should assist the applicant in application assembly and processing. The applicant shall use SF 424.1, “Application for Federal Assistance (For Non-Construction),” or SF 424.2, “Application for Federal Assistance (For Construction),” as applicable, when requesting financial assistance under this program.

(2) Each application for assistance will be carefully reviewed in accordance with the priorities established in §1942.305(b)(3) of this subpart. A pri-

ority rating will be assigned to each application. Applications selected for funding will be based on the priority rating assigned each application and the total funds available. All applications submitted for funding should contain sufficient information to permit FmHA or its successor agency under Public Law 103–354 to complete a thorough priority rating.

(b) *Review of decision*. When the District Director is informed that favorable action will not be taken on a preapplication or application, the applicant will be notified in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA or its successor agency under Public Law 103–354 may be requested by the applicant in accordance with subpart B of part 1900 of this chapter.

[45 FR 73637, Nov. 6, 1980, as amended at 50 FR 33332, Aug. 19, 1985; 53 FR 30249, Aug. 11, 1988; 55 FR 135, Jan. 3, 1990; 57 FR 33101, July 27, 1992]

### § 1942.312 [Reserved]

### § 1942.313 Plan to provide financial assistance to third parties.

(a) For applications involving establishment of a revolving fund to provide financial assistance to third parties the applicant shall develop a plan which outlines the purpose and administration of the fund. The plan will include:

- (1) Planned projects to be financed.
- (2) Sources of all non RBE funds.
- (3) Amount of technical assistance (if any).
- (4) Purpose of the loans.
- (5) Number of jobs to be created/saved with each project.
- (6) Project priority and length of time involved in completion of each project.
- (7) Other information required by the State Office.

(b) Each third party project receiving funds will be reviewed for eligibility. When the applicant does not have a list of projects to be completed, the applicant should advise the FmHA or its successor agency under Public Law 103–

## RHS, RBS, RUS, FSA, USDA

354 at the time a preapplication is submitted.

[55 FR 135, Jan. 3, 1990, as amended at 57 FR 33101, July 27, 1992]

### **§ 1942.314 Grants to provide financial assistance to third parties, television demonstration projects, and technical assistance programs.**

For applications involving a purpose other than a construction project to be owned by the applicant, the applicant shall develop a Scope of Work. The Scope of Work will be used to measure the performance of the grantee. As a minimum, the Scope of Work should contain the following:

(a) The specific purposes for which grant funds will be utilized, *i.e.*, Technical Assistance, Revolving Fund, etc.

(b) Timeframes or dates by which action surrounding the use of funds will be accomplished.

(c) Who will be carrying out the purpose for which the grant is made (key personnel should be identified).

(d) How the grant purposes will be accomplished.

(e) Documentation regarding the availability and amount of other funds to be used in conjunction with the funds from the RBE/television demonstration program.

(f) For grants involving a revolving fund the scope of work should include those items listed in paragraphs (a) through (e) of this section as well as the following:

(1) Information which will establish/identify the need for the revolving loan fund.

(2) Financial statements which will demonstrate the financial ability of the applicant to administer the revolving loan fund. As a minimum the financial statements will include:

(i) Balance sheet

(ii) Income statement

(3) Detail on the applicants experience in operating a revolving loan fund.

(g) For technical assistance and television demonstration program projects, the scope of work should include a budget based on the budget contained in the application, modified or revised as appropriate, which includes salaries, fringe benefits, consultant costs, indi-

## § 1942.315

rect costs, and other appropriate direct costs for the project.

[55 FR 135, Jan. 3, 1990, as amended at 57 FR 33101, July 27, 1992]

### **§ 1942.315 Docket preparation and Letter of Conditions.**

(a) The applicable provisions of § 1942.5 of subpart A of part 1942 of this chapter relating to preparation of loan dockets will be followed in preparing grant dockets.

(b) The State Director or the State Director's designated representative will prepare a Letter of Conditions outlining the conditions under which the grant will be made. It will include those matters necessary to assure that the proposed development is completed in accordance with approved plans and specifications, that grant funds are expended for authorized purposes, and that the terms of the Scope of Work and requirements as prescribed in parts 3015 and 3016 of 7 CFR are complied with. The Letter of Conditions will be addressed to the applicant, signed by the State Director or other designated FmHA or its successor agency under Public Law 103-354 representative, and mailed or handed to appropriate applicant officials. Each Letter of Conditions will contain the following paragraphs.

"This letter established conditions which must be understood and agreed to by you before further consideration may be given to the application."

"This letter is not to be considered as grant approval nor as a representation as to the availability of funds. The docket may be completed on the basis of a grant not to exceed \$\_\_\_\_\_."

"Please complete and return the attached Form FmHA or its successor agency under Public Law 103-354 1942-46, 'Letter of Intent to Meet Conditions,' if you desire further consideration be given your application."

Other items in the Letter of Conditions should include those relative to: Maximum amount of grant, contributions, final plans and specifications, construction contract documents and bidding, required project audit, evidence of compliance with all applicable Federal, State, and local requirements, closing instructions, DOL certifications, compliance with any required environmental mitigation measures,

## § 1942.316

and other requirements including those of Regional Commissions when a grant is being made by a Regional Commission.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 30249, Aug. 11, 1988; 57 FR 33101, July 27, 1992]

## § 1942.316 Grant approval, fund obligation and third party financial assistance.

(a) *Grant approval.* FmHA or its successor agency under Public Law 103-354 State Directors are authorized to approve grants made in accordance with this subpart and subpart A of part 1901 of this chapter.

(b) *Fund obligation and approval announcement.* Funds will be obligated and approval announcement made in accordance with the provisions of § 1942.5(d) of subpart A of part 1942 of this chapter.

(c) *Third party financial assistance.* Approval of a grant to an applicant who will use grant funds to provide financial assistance to a third party does not constitute approval of the projects financed by the grantee. The review, approval and disbursement of funds for specific projects financed by grantees will be completed in accordance with applicable sections of this subpart.

[45 FR 73637, Nov. 6, 1980, as amended at 47 FR 36413, Aug. 20, 1982; 53 FR 30250, Aug. 11, 1988]

## §§ 1942.317-1942.320 [Reserved]

## § 1942.321 Subsequent grants.

Subsequent grants will be processed in accordance with this subpart.

## §§ 1942.322-1942.347 [Reserved]

## § 1942.348 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute, an applicable law or decision of the Comptroller General, if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest and show how the adverse impact will be eliminated or minimized if the exception is made.

[55 FR 135, Jan. 3, 1990]

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## § 1942.349 Forms, guides, and attachments.

Guides 1 and 2 of this subpart, Attachment 1 and Forms referenced (all available in any Rural Development office) are for use in administering RBE/television demonstration grants.

[62 FR 33510, June 19, 1997]

## § 1942.350 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0132. Public reporting burden for this collection of information is estimated to vary from one-half to 40 hours per response, with an average of 1.8 hours per response including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[57 FR 33101, July 27, 1992]

GUIDE 1 TO SUBPART G OF PART 1942—  
PROJECT MANAGEMENT AGREEMENT  
BETWEEN THE \_\_\_\_\_ REGIONAL  
COMMISSION AND THE FARMERS  
HOME ADMINISTRATION OR ITS SUC-  
CESSOR AGENCY UNDER PUBLIC LAW  
103-354, DEPARTMENT OF AGRI-  
CULTURE

(Grantee) \_\_\_\_\_  
County, \_\_\_\_\_  
Page No. \_\_\_\_\_

### I. Introduction

A. The \_\_\_\_\_ Regional Commission is providing a (basic or supplemental) grant for (purpose) \_\_\_\_\_ to (grantee) \_\_\_\_\_, and the U.S. Department of Agriculture, Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 has approved and will administer that grant. The FmHA or its successor agency under Public Law 103-354 has determined that funds (can or cannot) be made available

under its funding program for this fiscal year for the project. The project does meet all the requisites for assistance under section 310(B) of the Consolidated Farm and Rural Development Act, as amended (7 USC 1926). In order to accomplish these purposes, the \_\_\_\_\_ Regional Commission's Federal Cochairman and the FmHA or its successor agency under Public Law 103-354 State Director hereby enter into this Memorandum of Understanding which is in accordance with the 31 USC 686.

- B. This agreement is intended to cover the application phase, construction phase, and final audit.

## II. General

### A. Project Cost

The project costs for the purposes of this agreement shall include the costs of construction, technical services, legal services, land acquisition, permits and rights-of-way, interest during construction and contingencies.

### B. Grant

The \_\_\_\_\_ Regional Commission shall make a (basic or supplemental) grant of \$ \_\_\_\_\_ up to but not exceeding \_\_\_\_\_% of the total cost of the project. These funds will be transferred to the Treasury Account of the Farmers Home Administration or its successor agency under Public Law 103-354 by Standard Form 1151, "Nonexpenditure Transfer Authorization."

C. The undersigned FmHA or its successor agency under Public Law 103-354 State Director on behalf of FmHA or its successor agency under Public Law 103-354, in concurring to this Project Management Agreement, hereby assures the Federal Cochairman that:

1. The estimated cost of the project is reasonable and the (basic or supplemental) grant, with the funds to be supplied by the applicant, are, in its judgment, sufficient to complete the project.
2. The funds to be supplied by the applicant are available or FmHA or its successor agency under Public Law 103-354 is reasonably satisfied that the applicant has the capability of supplying such funds.
3. FmHA or its successor agency under Public Law 103-354 is reasonably satisfied that the facility will be properly and efficiently administered, operated, and maintained and that the applicant will provide sufficient funds to assure the successful and continuing operation of the facility.

D. The (grantee) \_\_\_\_\_ is subject to Executive Order 11246 and will be required to evidence compliance by execution of the following:

1. Equal Opportunity Agreement—Form FmHA or its successor agency under Public Law 103-354 400-1

2. Nondiscrimination Agreement—Form FmHA or its successor agency under Public Law 103-354 400-4

E. The (grantee) \_\_\_\_\_ shall execute assurances of nonrelocation. (If applicable.)

## III. Construction Management

A. The forms and format for the documents shall conform to the requirements in subpart A of part 1942 of this chapter. Generally, the following items shall be included:

1. Contract Documents
2. Specifications
3. Plans

B. FmHA or its successor agency under Public Law 103-354 will approve the plans and specifications.

C. FmHA or its successor agency under Public Law 103-354 will obtain a certification of adequacy from the Federal Environmental Protection Agency (include only when applicable).

D. FmHA or its successor agency under Public Law 103-354 will obtain a non-pollution certificate from the (state) \_\_\_\_\_ (agency) \_\_\_\_\_ (include only when applicable).

E. FmHA or its successor agency under Public Law 103-354 will make monthly inspections.

F. Contract change orders will not become effective until approved by FmHA or its successor agency under Public Law 103-354.

G. Final inspection will be conducted by FmHA or its successor agency under Public Law 103-354.

## IV. Financial Management

A. Financial management of the project shall be according to subpart A of part 1942 of this chapter.

B. FmHA or its successor agency under Public Law 103-354 will provide the \_\_\_\_\_ Regional Commission with a copy of the audit report.

C. If actual costs fall below the costs on which the grant was calculated, the Federal and non-Federal shares will be reduced proportionately.

D. FmHA or its successor agency under Public Law 103-354 will conform to the financial reporting requirements for transferred funds as required by the attached copy of "Reporting of Funds Transfer by Participating Agencies."

## V. Compensation

Services rendered by FmHA or its successor agency under Public Law 103-354 for the processing and administration of Commission grants in cases where neither FmHA or its successor agency under Public Law 103-354 loan nor grant funds are involved shall be on a reimbursable basis. Reimbursement will be based on five percent of the amount of the grant

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up to \$50,000 and an additional one percent of any amount over the first \$50,000 of the Commission grant. The full amount of the reimbursement will be transferred to FmHA or its successor agency under Public Law 103-354 at the time the grant funds are transferred to FmHA or its successor agency under Public Law 103-354.

- VI. No provision in this agreement shall abrogate the legal requirements of administrative responsibilities as set forth in the Consolidated Farm and Rural Development Act or section 509 of the Public Works and Economic Development Act of 1965, as amended.

For the \_\_\_\_\_ Regional Commission  
(name) \_\_\_\_\_  
Federal Cochairman \_\_\_\_\_  
\_\_\_\_\_, 197 \_\_\_\_\_

For the Farmers Home Administration or its  
successor agency under Public Law 103-354,  
USDA  
(name) \_\_\_\_\_  
State Director \_\_\_\_\_  
\_\_\_\_\_, 197 \_\_\_\_\_

**GUIDE 2 TO SUBPART G OF PART 1942—  
RESOLUTION**

Whereas the \_\_\_\_\_ (hereinafter called public body) desires to obtain financial assistance from the Farmers Home Administration or its successor agency under Public Law 103-354, United States Department of Agriculture, pursuant to section 310 B of the Consolidated Farm and Rural Development Act, for the purpose of providing \_\_\_\_\_ (describe briefly the nature of the project) \_\_\_\_\_ (herein referred to as the facility) and as a condition to and in consideration of receiving financial assistance from the Farmers Home Administration or its successor agency under Public Law 103-354 this resolution is being adopted.

Therefore, in consideration of the premises the public body agrees as follows:

1. No private business enterprises shall be allowed to use or occupy the facility if such use or occupancy would be calculated to, or is likely to, result in the transfer from one area to another of any employment or business activity provided by operations of the private business enterprises. This limitation shall not be construed to prohibit use and enjoyment of the facility by such private business entity through the establishment of a new branch, affiliate, or subsidiary if the establishment of such branch, affiliate, or subsidiary will not result in the increase in unemployment in the area of original location (or in any other area where such entity conducts business operations), unless there is reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of

its original location (or in any other area where it conducts such operation).

2. No private business enterprises shall be allowed to use or occupy the facilities if such use or occupancy would be calculated to, or is likely to, result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, where there is not sufficient demand for such goods, materials, commodities, services or facilities to employ the sufficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse affect upon existing competitive enterprises in the area.

3. Prior to allowing the use or occupancy of the facilities by any private business enterprise, the public body shall clear such use or occupancy with the Manpower Administration, Department of Labor, Washington, DC, by submitting information required by the Department of Labor for certification under the Act. This information shall be submitted to Farmers Home Administration or its successor agency under Public Law 103-354 for transmittal to the Department of Labor. The public body agrees to make no final commitment with any private business enterprise regarding such use or occupancy if the Department of Labor issues a negative certification under the Act. The public body shall obtain prior clearance in this matter for a period of three years after the date of an affirmative certification by the Department of Labor on the application for financial assistance now pending before the Farmers Home Administration or its successor agency under Public Law 103-354.

This resolution shall be in force and effect immediately.

The voting was yeas \_\_\_\_\_, nays \_\_\_\_\_, absent \_\_\_\_\_.  
(Name of public body) \_\_\_\_\_  
by (Name and Title) \_\_\_\_\_

*Certification*

I the undersigned as (Secretary) (Town Clerk) of the \_\_\_\_\_ do hereby certify that the foregoing resolution was duly adopted at a meeting of \_\_\_\_\_ duly called and held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and that such resolution has not been rescinded or amended in any way. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Seal)

(Town Clerk) (Secretary) of

**Subpart H [Reserved]**

**PART 1943 [RESERVED]**